Transcript of Record

SUPREME COURT OF THE UNITED STATES

October Term, 1916.

No. 968.

JOHN W. HAMER, ET AL.,

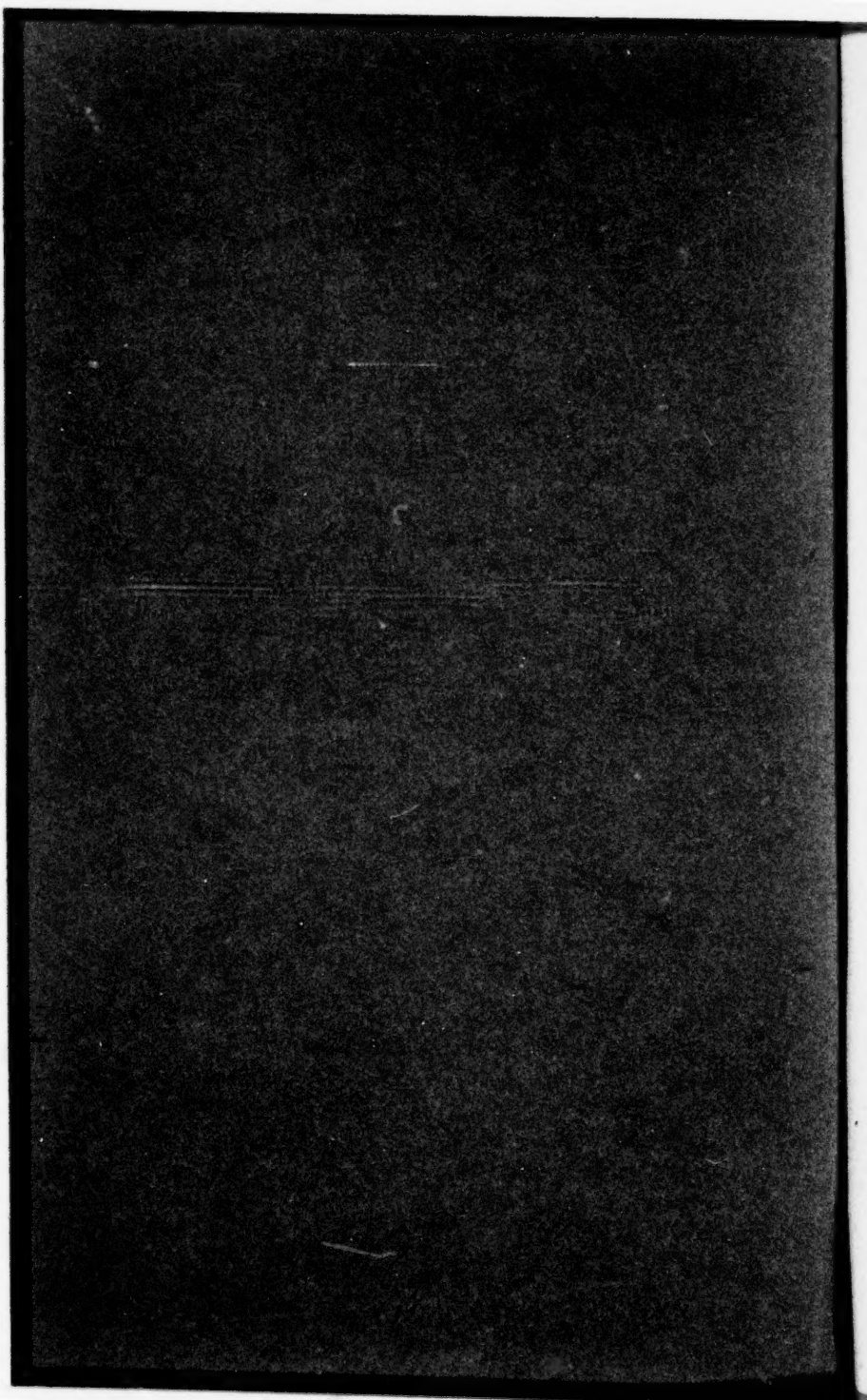
Appellants,

vs.

NEW YORK RAILWAYS COMPANY, ET AL.

IN APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

FILED MAR 7 - 1917



SUPREME COURT OF THE UNITED STATES.

October Term, 1916.

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN, and CHARLES E. LOXLEY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York as Trustee,

PLAINTIFFS-APPELLANTS,

against

NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY and CENTRAL TRUST COMPANY OF NEW YORK,

DEFENDANTS-APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

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HAMER, et al. *vs.* N. Y. RAILWAYS CO.

United States District Court of Appeals for the Second Circuit.

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN, and CHARLES E. LOXLEY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York, as Trustee, Plaintiffs-Appellants,

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against

NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY and CENTRAL TRUST COMPANY OF NEW YORK, Defendants-Appellees.

TRANSCRIPT OF RECORD.

Appeal from the United States District Court for the Southern District of New York.

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Equity Subpoena.

The President of the United States of America to New York Railways Company, Metropolitan Street Railway Company and Central Trust Company of New York, Greeting:

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill

JOHN W. HAMER, et al. *vs.*

of complaint exhibited against you in the said Court in a suit in Equity, by John W. Hamer, W. C. Heppenheimer, A. Merritt Taylor, Horace A. Doan, and Charles E. Loxley, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York, as Trustee, and to further do and receive what the said Court shall have considered in this behalf; and this you are not to omit under the penalty on you and each of you of Two hundred and fifty dollars ($250).

Witness, Honorable George C. Holt, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 9th day of October, in the year one thousand nine hundred and thirteen and of the Independence of the United States of America the one hundred and thirty-eighth.

ALEX. GILCHRIST, JR., *Clerk.*

A. S. GILBERT,
Plaintiffs' Sol'r.

The defendants are required to file their answer or other defense in the above cause in the Clerk's office of this Court, on or before the twentieth day after service hereof excluding the day of said service; otherwise the bill aforesaid may be taken pro confesso.

ALEX. GILCHRIST, JR., *Clerk.*

NEW YORK RAILWAYS COMPANY, et al. 7

Bill of Complaint.

DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF NEW YORK.

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN, and CHARLES E. LOXLEY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York as Trustee, Plaintiffs,

against

NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY and CENTRAL TRUST COMPANY OF NEW YORK, Defendants.

Complaint In Equity

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To the District Court of the United States, for the Southern District of New York:

The plaintiffs above named complain for themselves and on behalf of all other similarly situated holders of bonds issued by Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and known as its First Mortgage, Five Per Cent. Gold Bonds, consisting of fifteen hundred bonds of the par value of One thousand dollars

each, numbered consecutively from one to fifteen hundred, both inclusive, and secured by mortgage dated the first day of October, 1896, and made, executed and delivered by said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company to Central Trust Company of New York as trustee, who shall come in and contribute to the expenses of this action; and allege:

I. That the plaintiff, John W. Hamer, is a resident and citizen of the State of New Jersey;
11 that the plaintiff W. C. Heppenheimer is a resident and citizen of the State of New Jersey; that the plaintiff A. Merritt Taylor is a resident and citizen of the State of Pennsylvania; that the plaintiff Horace A. Doan is a resident and citizen of the State of Pennsylvania; and that the plaintiff Charles E. Loxley is a resident and citizen of the State of Pennsylvania.

II. That at all the times hereinafter mentioned, the defendant, Metropolitan Street Railway Company, was a street surface railway corporation duly organized and existing under and by
12 virtue of the laws of the State of New York, and had its principal place of business in the Borough of Manhattan, City of New York.

III. That the defendant, New York Railways Company, was incorporated on or about the 29th day of December, 1911, under the Stock Corporation Law of the State of New York, for the purpose, among others, of taking and possessing the property and franchises which formerly belonged to the defendant, Metropolitan Street Railway Company; and that said defendant has its

principal place of business in the Borough of Manhattan, City of New York.

IV. That at all the times hereinafter mentioned, the defendant Central Trust Company of New York was and now is a domestic corporation created and existing under an act of the Legislature of the State of New York entitled "An Act to Incorporate Central Trust Company of New York," and the several acts amendatory thereof and supplemental thereto, and having power to accept the mortgage hereinafter mentioned and to 14
execute the trust thereunder; and that said defendant has its principal place of business in the Borough of Manhattan, City of New York.

V. That at all the times hereinafter mentioned, the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company was a street surface railway corporation duly organized and existing under and by virtue of the laws of the State of New York, and had full power and authority to issue the bonds hereinafter described, and to execute and deliver the mortgage hereinafter described, for the purpose therein set forth.

VI. That on or about the first day of October, 15
1896, said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, in the due exercise of the powers and authority by it in that behalf possessed, and due corporate action having first been had, for the purpose of acquiring, completing, equipping and operating its railroad, for the transaction of its business and the exercise of its corporate rights, privileges and franchises, and for its other lawful corporate purposes, did determine to issue its bonds to be known as its

16 JOHN W. HAMER, et al. *vs.*

First Mortgage, Five Per Cent. Gold Bonds, consisting of fifteen hundred bonds of the par value of One thousand dollars each, numbered consecutively from one to fifteen hundred, both inclusive, each payable to bearer or to the registered holder thereof, in gold coin of the United States of America of or equal to the then standard of weight and fineness, on the first day of October, 1996, at its office or agency, in the City of New York, with interest thereon from the first day of October, 1896, at the rate of five per cent. per an-
17 num, payable in like gold coin semi-annually on the first days of April and October, in each year, upon the presentation and surrender of the coupons attached thereto as they should severally become due.

VII. That thereafter said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company made and executed its bonds in the amount and number as aforesaid of the aggregate par value of principal of one million five hundred thousand dollars, bearing date the first day of October, 1896; and by each of said bonds the said
18 Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company acknowledged itself indebted and for value received promised to pay to the bearer, or if the bond was registered to the registered holder thereof, on the first day of October, 1996, at its office or agency in the City of New York, the sum of one thousand dollars in gold coin of the United States of America of or equal in weight and fineness to the then standard with interest thereon from the first day of October, 1896, at the rate of five per cent. per annum, payable in like gold coin semi-annually on

the first days of April and October in each year upon presentation and surrender of the interest coupons thereto annexed as they severally become due, until such principal sum was fully paid.

VIII. The said bonds were in the following form:

"UNITED STATES OF AMERICA.
"State of New York.

"No. $1,000. 20
"Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company.

"First Mortgage Five Per Cent. Gold Bond.

"Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, a corporation organized and existing under the laws of the State of New York, United State of America, for value received, promises to pay to Central Trust Company of New York, or bearer, or, if registered, to the registered owner hereof, the sum of one thousand dollars in 21
gold coin of the United States, of the present standard of weight and fineness, at the office or agency of said Railroad Company in the City of New York on the first day of October, A. D., 1996; and to pay interest on the said sum, in like gold coin, semi-annually, at the office or agency of the said Railroad Company in the City of New York, at the rate of five per cent. per annum on the first days of April and October in each year on the

presentation and surrender of the respective annexed interest coupons.

"This bond is one of a series of bonds of like tenor, numbered consecutively from 1 to 1,500 inclusive, and amounting in the aggregate to $1,500,000, and the payment of the principal and interest of said bonds is equally secured by and according to the terms of a certain trust deed duly executed, recorded and delivered by said Railroad Company to Central Trust Company of New York, and its
23 successors, as Trustees, bearing date the first day of October, A. D., 1896, conveying to said Trustee by way of mortgage all the property and franchises of said Railroad Company then existing or thereafter to be acquired.

"This bond shall pass by delivery unless registered on the books of the said Railroad Company, in the City of New York, in which event, after proper endorsement of registration hereon, only the coupons shall pass by delivery, and the bond itself shall be payable only to the registered holder or his lawful representative, unless or until released
24 from registery at the request of such registered holder.

"This bond shall not be obligatory unless authenticated by the certificate of the Trustee of said mortgage endorsed hereon.

"IN WITNESS WHEREOF, Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company has caused this bond to be signed by its President and its Treasurer and its corporate seal to be hereto affixed this first day of October, A. D., 1896.

"Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company,

"By

"President.

"[Corporate Seal]
"Attest:

"Treasurer."

IX. That attached to said bonds were coupons in the following form:

"$25. Coupon No.

"Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company will pay to the bearer, at its office or agency in the City of New York, twenty-five dollars in gold coin of the United States of America on the first day of being six months' interest on its first mortgage five per cent. gold bond numbered

"Treasurer."

X. That all of said $1,500,000 par value of bonds were duly executed by the said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, authenticated by the defendant Central Trust Company of New York, and duly issued and delivered by it pursuant to the provisions of the mortgage hereinafter mentioned; and plaintiffs are informed and believe that the said $1,500,000.00 of bonds executed by said Twenty-eighth and Twenty-ninth Streets Crosstown Rail-

road Company and authenticated by the Central Trust Company of New York, and delivered as aforesaid, were duly issued negotiated and sold, and are outstanding and valid obligations.

XI. That the plaintiffs are the lawful owners and duly registered holders of bonds issued by Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company as aforesaid, of the par value of $1,373,000.00, together with the coupons attached thereto; and plaintiffs are informed and believe that others of said bonds and coupons which are not owned by plaintiffs have come into the possession of a number of persons for value, who are now the bona fide owners and holders thereof, the names of many of such persons being unknown to the plaintiffs.

XII. That in order to secure the payment of the principal and interest of said bonds and coupons thereto annexed, as the same should become due and payable, and the performance of all other covenants and agreements on the part of the said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company contained in said bonds, the said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company in the further due exercise of the corporate authority by it in that behalf possessed, and due corporate action having first been had, made, executed and delivered to the defendant, Central Trust Company of New York, its certain mortgage

or deed of trust bearing date the first day of October, 1896, wherein and whereby it granted, bargained, sold, transferred, set over, assigned, liened, released, conveyed and confirmed unto said Central Trust Company of New York as Trustee, and its successors or successor in the trusts thereby created all and singular its property and franchises of every nature and description whatsoever, whether then owned or thereafter to be acquired, including all its equipment, and personality and all its lands, buildings and real estate, in the City of New York and elsewhere, and all its railroads, railroad properties, railroad routes, and all its franchises, rights and privileges to maintain and operate railroads, and including also other property mentioned and set forth in said mortgage or deed of trust; to have and to hold the said property and franchises described in said mortgage or deed of trust for the pro rata benefit and security of the holders of the bonds and coupons secured thereby, without preference or priority of one bond over another or others by reason of priority in the time of issue and negotiation thereof or otherwise; so that each and all of said bonds issued and to be issued should have the same right, lien and privilege under and by virtue of said mortgage and should be equally secured thereby, with like effect as if they had been executed and negotiated simultaneously with the delivery of said mortgage and for the same consideration.

XIII. That the said mortgage contains the following provision in article "Third" thereof:

"If default shall be made in the payment of all or any part of any installment of the interest hereby secured to be paid, and should the same remain unpaid and in arrears for the space of six months after demand, or should any taxes or assessments upon the said mortgaged premises, or other charges having priority over the lien of this mortgage, remain in arrears for the space of one year after the same shall become due and payable, then and in that event, after the lapse of said periods respectively, the entire principal sum secured by said bonds then outstanding, together with all arrearage of interest thereon shall forthwith become due and payable, provided a majority in interest of the holders of said bonds shall so elect and certify their said election in writing to the Trustee, or its successors, signed by them or their lawful attorneys and duly acknowledged, even though the time in said bonds limited for the payment thereof shall not then have expired, anything in said bonds contained to the contrary thereof notwithstanding."

XIV. That the said mortgage also provides in Article Fourth that in case of default in the payment of the principal, if such default shall continue

"for sixty days after such payment shall become due either by the maturity of the bonds or by reason of the declaration of the Trustee under the provisions of this mortgage"

road Company in good condition and repair; to it shall be the duty of the Trustee on the written request of a majority of the bondholders to sell the mortgaged property; and in article Fifth that it shall be the duty of the Trustee, upon proper indemnification to execute the power of sale therein granted, or to take appropriate proceedings at law or in equity to enforce the rights of the Trustee and of the bondholders, the several remedies specified being cumulative and not exclusive one of the other.

XV. That the defendant, Central Trust Company of New York, duly accepted the trusts created in and by the said mortgage and as evidence of its acceptance thereof united in the execution of the same; and said mortgage was thereafter duly recorded in the office of the Register of the County of New York where said mortgaged property was situated.

XVI. That on or about the 29th day of September, 1896, the defendant Metropolitan Street Railway Company and the said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company entered into an agreement whereby said defendant Metropolitan Street Railway Company was granted the right to operate cars on the tracks of said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and to collect all fares of passengers riding in such cars, and in consideration thereof the said defendant Metropolitan Street Railway Company promised and agreed in and by said agreement to pay all taxes; to maintain the railroad owned by said Twenty-eighth and Twenty-ninth Streets Crosstown Rail-

run a sufficient number of cars daily to accommodate the traffic, and to pay the principal and interest of the said first mortgage five per cent. gold bonds issued as hereinbefore alleged by said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company; and that paragraph "Second" of said agreement between said defendant Metropolitan Street Railway Company and said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company provides as follows:

"*Second:* The party of the second part '(the Metropolitan Company)' does hereby agree to and with said party of the first part, as follows: * * *

"(b) To pay the principal and interest of the first mortgage five per cent. gold bonds of the party of the first part of the amount of One million five hundred thousand ($1,500,000) Dollars, which bonds are for the sum of One thousand ($1,000) Dollars each and payable on October 1, 1996, and to pay interest there on semi-annually at the rate of five (5%) per cent. per annum on the first days of April and October in each year."

XVII. That pursuant to said agreement between said defendant Metropolitan Street Railway Company and said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, and in due exercise of the corporate authority by it in that behalf possessed, and for good and valuable consideration as aforesaid, and intending that purchasers of said bonds should rely thereon, the said defendant Metropolitan Street Railway

Company promised and guaranteed to the defendant Central Trust Company of New York, as Trustee under the mortgage aforesaid, the payment of said bonds and interest, issued by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company on the first day of October, 1896, as aforesaid, being of the par value of $1,500,000; and that each of said bonds was endorsed by the said defendant Metropolitan Street Railway Company and issued by said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company with the following guarantee thereon:

"FOR VALUE RECEIVED, the Metropolitan Street Railway Company hereby guarantees to the Trustee of the within-mentioned mortgage, for the benefit of the holders thereof, punctual payment of the principal of the within bond and the interest thereon at the time and in the manner therein specified and according to the tenor of the several coupons belonging thereto.

"IN WITNESS WHEREOF the said The Metropolitan Street Railway Company has caused its corporate name to be signed hereto by its President, or Vice-President, and its corporote seal to be affixed and attested by its Secretary or Assistant Secretary this first day of October, 1896.

"THE METROPOLITAN STREET RAILWAY COMPANY.

"By "H. H. VREELAND,

"[Corporate Seal] "President.

"Attest:

"CHARLES E. WARREN,

Secretary."

That the said bonds bearing the said guarantee of the said defendant Metropolitan Street Railway Company were sold to bona fide purchasers who purchased the same in reliance upon aforesaid guarantee of said defendant Metropolitan Street Railway Company; and that thereafter said bonds were transferred and negotiated by purchasers for good and valuable considerations in reliance upon the guarantee by the defendant Metropolitan Street Railway Company aforesaid; and that all of the bonds now owned by the plaintiffs
47 of the par value of $1,373,000 have endorsed thereon the said guarantee of said defendant Metropolitan Street Railway Company and were negotiated and purchased in reliance upon said guarantee.

XVIII. That heretofore, to wit: on or about the first day of October, 1908, the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company made default in the payment of the installment of interest mentioned in said bonds and coupons which accrued and became due and payable on said date upon said bonds; and payment of all or some part of said installment of
48 interest was duly demanded on or about the date on which the same became due and at the place where the same was payable.

The amount of such installment of interest was the sum of Thirty-seven thousand five hundred ($37,500) Dollars; and the said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company did not pay and has not paid, or caused to be paid, any of said interest or said coupons when they became due, and has not paid or satisfied, or caused to be paid or satisfied, nor has the

said defendant Metropolitan Street Railway Company, or any other person, paid or satisfied the semi-annual installment on said bonds or any part thereof which became due October 1, 1908, as aforesaid, or thereafter in any manner, though payment thereof was duly demanded; and said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company has not furnished or provided, or placed at the office of the said defandant Central Trust Company of New York, at its financial agency in the City of New York, or elsewhere, any sum or sums of money whatever to pay said 50
interest and interest coupons which became due October 1, 1908, although the same were payable at its office or agency in the City of New York, and thereby default was made by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company in the performance of the terms and conditions of its said mortgage dated October 1, 1896, which default still continues; and thereby default was made by said defendant Metropolitan Street Railway Company upon its promise to pay the interest on said bonds, which default still continues.

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XIX. That heretofore and on or about the 28th day of September, 1908, in a certain action brought in the Supreme Court of the State of New York by the Attorney General of said State on behalf of the People of the State of New York against the said Twenty-eighth and Twenty- ninth Streets Crosstown Railroad Company, the complaint in which action alleged that said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company for more than a year prior to the commencement of the action had been and had re-

mained and was then insolvent, and prayed for a dissolution of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and the distribution of its property and effects among its creditors, and for other relief, one Joseph B. Mayer was duly appointed receiver of said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and required to give a bond in the sum of $35,000 for the faithful performance of his duties as such temporary receiver; that said Joseph B. Mayer thereafter duly gave bond in the
53 sum required by said order, which bond was approved by a Justice of the Supreme Court of the State of New York; and thereafter said Joseph B. Mayer took possession of the property and effects of said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company as such temporary receiver; and that the said Twenty-eighth and Twenty-ninth Crosstown Railroad Company was then and ever since has been, and now is insolvent.

XX. That heretofore and on or about the 24th day of September, 1907, in a certain action brought in this Court wherein the Pennsylvania
54 Steel Company and another were complainants under a general creditors' bill alleging the insolvency of New York City Railway Company, a New York corporation, Adrian H. Joline and Douglas Robinson were duly appointed receivers of the property of said New York City Railway Company and duly qualified as such on or about said date; and that by order filed October 1, 1907, in said cause, upon the petition of the defendant Metropolitan Street Railway Company, the said Adrian H. Joline and Douglas Robinson were

duly appointed receivers of the property of the defendant Metropolitan Street Railway Company, and on or about that date duly qualified as receivers of said company; that by order made and filed October 9, 1907, in said cause, Adrian H. Joline and Douglas Robinson were duly continued as receivers of the property of New York City Railway Company and the defendant Metropolitan Street Railway Company; and that by said orders appointing such receivers this Court enjoined all persons from interfering with the business and properties of said companies by suit or otherwise; and that by order filed November 9, 1907, in said cause, the defendant Metropolitan Street Railway Company was adjudged to be insolvent.

XXI. That by order filed in this Court on the 10th day of August, 1908, Adrian H. Joline and Douglas Robinson, as receivers of said defendant Metropolitan Street Railway Company, were instructed not to adopt the said trackage agreement with the said Twenty-eighth and Twenty-ninth Streets Crosstown Railway Company dated September 29, 1896; and on the first day of October, 1908, the said receivers ceased operating over the tracks of the said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company.

XXII. That on or about the 2d day of April, 1909, pursuant to the terms and provisions of the said mortgage made, executed and delivered by the said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company to the defendant Central Trust Company of New York, and upon the request of a majority of the holders of the

bonds under said mortgage, the said Trustee elected by reason of the default in the payment of the interest which accrued October 1, 1908, and the continuance of the default for a period of six months, that the principal sum secured by the said bonds then outstanding should forthwith become due and payable.

XXIII. That on or about the 12th day of March, 1909, the defendant Central Trust Company of New York, as Trustee under said mort-
59 gage, began a suit in the Supreme Court of the State of New York, against said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and said Joseph B. Mayer as receiver of said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, to foreclose the said mortgage; and that subsequent to the commencement of said action the said defendant Central Trust Company of New York, upon notice to the said defendant Metropolitan Street Railway Company and to the receivers thereof, applied to this Court for leave to join the said defendant Metropolitan Street Railway Company as a party defendant to the said foreclosure action; and there-
60 after by order filed the 20th day of March, 1909, in said cause pending in this Court wherein said defendant Metropolitan Street Railway Company was adjudicated insolvent, an order was duly made by this Court whereby said Central Trust Company of New York, as Trustee under said mortgage hereinbefore described, was permitted to join as a party defendant to said foreclosure action the said defendant Metropolitan Street Railway Company; and it was further provided by the said order of this Court that the claim of said

defendant Central Trust Company of New York as trustee, aforesaid, upon the guarantee hereinbefore alleged of the defendant Metropolitan Street Railway Company be liquidated in the aforementioned foreclosure action.

XXIV. That thereafter by supplemental summons and amended complaint, the defendant Metropolitan Street Railway Company was made a party defendant to said foreclosure action and said Metropolitan Street Railway Company thereupon duly appeared in said action and served an 62
answer which admitted substantially all the allegations of the complaint and particularly those which alleged the execution of the Metropolitan Street Railway Company of the guarantee of the bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, as hereinbefore alleged.

XXV. That the said suit begun by Central Trust Company of New York to foreclose the said mortgage made, executed and delivered by the said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company duly proceeded to judgment; and that by judgment of foreclosure and 63
sale made in said action on the 19th day of February, 1910, it was duly adjudged and decreed among other things, that the said mortgage made by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company bearing date October 1, 1896, was a valid and subsisting mortgage and constituted a lien upon the mortgaged premises, property and franchises in said mortgage described; that there was issued and outstanding and secured by said mortgage fifteen

hundred of the bonds mentioned and described therein of the par value of One thousand ($1,000) Dollars each, aggregating One million five hundred thousand ($1,500,000) Dollars of principal, together with coupons for interest thereunto appertaining; that default was made in the payment of the several installments of interest which became due upon said bonds respectively on the first days of October, 1908, and April, 1909; that on or about April 2, 1909, and pursuant to the provisions in said mortgage con-
65 tained, the principal of said bonds was declared and became forthwith due and payable; that prior to the negotiation and sale of said bonds the defendant Metropolitan Street Railway Company duly guaranteed the punctual payment of the principal and interest thereof and cause said guarantee to be duly endorsed upon each of said bonds in the form set forth in paragraph Seventh of the amended complaint in said foreclosure action; and that the amount due upon said bonds and mortgage dated October 1, 1896, set forth in the amended complaint, to the date of the report of the referee appointed to compute the amount
66 due upon said bonds and mortgage in said foreclosure action, was the sum of $1,639,167.67; and it was further adjudged and decreed by the said judgment that the said mortgaged premises, property and franchises be sold upon certain conditions in said judgment directed, and that in case the proceeds of such sale should not be sufficient to pay in full the amounts in said judgment found to be due and unpaid for or in respect to the principal and interest upon each and all of said mortgage bonds, the referee appointed by said judgment should report to the Court the amount of

any such deficiency and that the said Central Trust Company of New York as Trustee should have judgment for the amount thereof against the said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and also against the defendant Metropolitan Street Railway Company.

XXVI. That thereafter and pursuant to said judgment of foreclosure and sale, the property of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company subject to said mortgage was sold for the sum of Fifty thousand 68
($50,000) Dollars; that the expenses of the sale amounted to $7,759.98; that the balance, amounting to $42,240.02, was credited against the amount found due under said mortgage; that upon the report of the Referee appointed to sell in said judgment of foreclosure and sale, a deficiency judgment was duly entered in the office of the Clerk of the County of New York in said foreclosure action, on or about the 20th day of February, 1912, against the defendant Metropolitan Street Railway Company and the said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company for the sum of $1,745,344.21, pursuant to the 69
judgment aforesaid.

XXVII. That no part of said judgment or the accrued interest thereon have been paid, and that the whole of said judgment and all of said bonds and coupons, and accrued interest, remain unsatisfied and unpaid.

XXVIII. That no execution on said judgment has been issued against said defendant Metropolitan Street Railway Company or said Twenty-

eighth and Twenty-ninth Streets Crosstown Railroad Company because said corporations were at the time of the docketing of said judgment, ever since have been and now are insolvent; that the property of said judgment debtors at the time of the docketing of said judgment was up to and until the sale thereof pursuant to judgment of foreclosure and sale, in the charge and custody of receivers appointed in said insolvency proceedings aforesaid; that interference with the said property by issue of execution or other process was en-
71 joined by the courts in which said proceedings are pending; and that the plaintiffs are informed and believe that the receiver of said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company has no property in his possession applicable to or sufficient in value to pay the said deficiency judgment.

XXIX. That subsequent to the commencement of said insolvency proceedings against the defendant Metropolitan Street Railway Company in this Court wherein the said Adrian H. Joline and Douglas Robinson were appointed receivers,
72 and while the said foreclosure action by the defendant Central Trust Company of New York against the defendant Metropolitan Street Railway Company and said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company was pending, various committees were formed for the alleged purpose of protecting the interests of bondholders, creditors, stockholders and other persons having claims against said defendant Metropolitan Street Railway Company, and for the purpose of effecting a reorganization of said defendant Metropolitan Street Railway Company

by acquiring its property and franchises from the receivers appointed in said action; and that plaintiffs are informed and believe a so-called "Joint Committee" was organized to acquire said properties and franchises at the sales thereof, or to cause such acquisition to be made in behalf of said committee pursuant to a certain "Plan and Agreement for the Reorganization of the Metropolitan Street Railway Company," which said Plan and Agreement is dated November 29, 1911.

The plaintiffs annex hereto a copy of said "Plan and Agreement for the Reorganization of the Metropolitan Street Railway Company," dated November 29, 1911, marked Exhibit A; and pray that the same may be considered as though set forth at length in this complaint and the contents thereof spread in full upon the face hereof. 74

XXX. That plaintiffs are informed and believe that subsequent to the formulation and issuance of said Plan and Agreement for the reorganization of said Metropolitan Street Railway Company such steps were taken thereunder by the said Joint Committee, or other persons acting in pursuance thereof, that all of the property and franchises of the defendant Metropolitan Street Railway Company in the hands of the said receivers thereof were acquired by judicial sale for the purposes of said Plan and Agreement of Reorganization, and that in furtherance of said Plan and Agreement for Reorganization, the defendant New York Railways Company was organized under the provisions of Sections 9 and 10 of the Stock Corporation Law of the State of New York, for the purpose of taking and possessing the property and franchises which formerly 75

belonged to the defendant Metropolitan Street Railway Company and which were acquired pursuant to said Plan and Agreement for Reorganization by means of the judicial sales aforesaid; and that thereafter and on or about the 1st day of January, 1912, and in further pursuance of said Plan and Agreement for Reorganization, the said property and franchises were transferred and delivered into the possession and control of the defendant New York Railways Company; and that the defendant New York Railways Company is
77 now in control and in possession of said property, franchises and assets.

XXXI. That the said property of the defendant Metropolitan Street Railway Company transferred to the defendant New York Railways Company pursuant to said "Plan and Agreement for the Reorganization of the Metropolitan Street Railway Company," consists of an extensive system of street railways in the City of New York, together with franchises, leases and other grants for the operation of such system of street railways, and equipment, power houses, car barns, and other real estate, and other property pertain-
78 ing to or adapted for use in the operation and maintenance of such system of street railways, together with all of the rights of the old securities acquired by the said Joint Committee in exchange for the new securities under the provisions of said Plan and Agreement for Reorganization; and that plaintiffs are informed and believe that said property and franchises are of great value and that there was expended in the construction, reconstruction, extension, improvement, and betterment of said system transferred as aforesaid a

sum in excess of One hundred and twenty million dollars.

XXXII. That in further pursuance of said Plan and Agreement for Reorganization of said defendant Metropolitan Street Railway Company, and in consideration of the acquisition of said property, franchises and assets of the defendant Metropolitan Street Railway Company acquired at said judicial sales, and on or about the 24th day of January, 1912, the defendant New York Railways Company issued its stock, bonds and securities in the manner following: 80

	Four per cent. Refunding Bonds	*Adjustment Bonds*	*Stock*
For 5 per cent. general and collateral trust bonds of the Metropolitan Street Railway Company or certificates representing the same.....	$6,250,000	$12,500,000	
For four per cent. refunding mortgage bonds of Metropolitan Street Railway Company or certificates representing the same.....	4,151,000	12,453,000	
For collateral five per cent. notes of the Central Crosstown Railroad Company, due May 1, 1909	339,600	1,595,400	
For first mortgage bonds of Metropolitan Crosstown Railroad Company, due April 1, 1920	90,000	510,000	
For tort claims against New York City Railway Company or Metropolitan Street Railway Company filed before the Special Master of the United States Circuit Court to the amounts adjudicated as valid thereon	937,500	875,000	
To holders for stock of the Metropolitan Street Railway Company to the amount of $52,000,000, or of the Central Crosstown Railroad Company			

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to the amount of $6,000,000, or for the Metropolitan Improvement notes to the amount of $4,000,000 on payment of $12.50 per $100 of the face thereof, or in so far as not so taken, to the joint committee on its payment of a like amount	4,997,780	2,999,800	$17,495,060
For adjustment of fractional lots and such other purposes as the joint committee may decide	2,220	200	4,940
	$16,768,100	$31,933,400	$17,500,000

83 XXXIII. That no provision was made in said Plan and Agreement for the Re-Organization of the Metropolitan Street Railway Company for the liquidation, payment or adjustment of the said deficiency judgment obtained by said defendant Central Trust Company of New York, or for the bonds, coupons and accrued interest guaranteed as aforesaid by the defendant Metropolitan Street Railway Company; that no provision was made in the reorganization of said Metropolitan Street Railway Company or in the organization of the said defendant New York Railways Company for the payment, adjustment or liquidation of said indebtedness of the defendant Metropolitan Street
84 Railway Company due by virtue of said judgment and of the guarantee of said bonds, coupons and accrued interest; that no stock, bonds or securities of the said defendant New York Railways Company were issued in payment, liquidation, or adjustment of said judgment against the defendant Metropolitan Street Railway Company, or its indebtedness upon its guarantee of the said

bonds of the said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, that no stock, bonds, securities or other thing of value was tendered pursuant to said Plan and Agreement of Re-organization or otherwise, in fair and equitable payment of said judgment or indebtedness; and that the said Plan and Agreement for the Re-organization of the defendant Metropolitan Street Railway Company was carried out and consumated, and the said property, franchises and assets of the defendant Metropolitan Street Railway Company were acquired by the said defend- 86
ant New York Railways Company, and the said stock, bonds and securities were issued by the defendant New York Railways Company, without the assent of the plaintiffs or the defendant Central Trust Company of New York as trustee under said mortgage.

XXXIV. That plaintiffs are informed and believe that there is no property of the defendant Metropolitan Street Railway Company available for or applicable to the payment of the said judgment except the property transferred to and acquired by the defendant New York Railways 87
Company as aforesaid.

XXXV. That the transfer and acquisition of said property, franchises and assets of the defendant Metropolitan Street Railway Company pursuant to said Plan and Agreement of Reorganization, by the defendant New York Railways Company, without provision for payment, adjustment or liquidation of the said judgment and indebtedness of the defendant Metropolitan Street Railway Company upon its guarantee of

said bonds; and the provision in said Plan and Agreement of Re-organization for the issue of stock and bonds to other creditors of the defendant Metropolitan Street Railway Company, and the issue of stock by the defendant New York Railways Company of the par value of $17,495,060 to the holders of stock of the defendant Metropolitan Street Railway Co. and the issue of said defendant New York Railways Co. of $2,999,800 adjustment bonds and of $4,997,780 four per cent. refunding bonds to the holders of stock of
89 said defendant Metropolitan Street Railway Company, was illegal and void as against the defendant Central Trust Company of New York, as trustee under said mortgage made by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, and as the holder of said judgment against the defendant Metropolitan Street Railway Company; and was illegal and void as against the plaintiffs and other holders of said bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company hereinbefore described and secured by the said mortgage; and that the issue by the defendant New
90 York Railways Company of $1,875,000 adjustment bonds and $937,500 four per cent., refunding bonds to the holders of certain tort claims against the defendant Metropolitan Street Railway Company, pursuant to said Plan and Agreement, was null and void, and illegal as against the said defendant Central Trust Company of New York, as Trustee under said mortgage made by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and as the holder of said judgment against the defendant Metro-

politan Street Railway Company; and was illegal and void as against the plaintiffs and other holders of said bonds of the twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company hereinbefore described and secured by the said mortgage.

XXXVI. That the defendant Central Trust Company of New York holds the said judgment against the defendant Metropolitan Street Railway Company, amounting to $1,745,344.21, for the benefit of and as the trustee for the plaintiffs 92
and the other holders of said bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company hereinbefore described; and that the reason why this action is brought by the plaintiffs and why the Central Trust Company of New York is made a party defendant is that the plaintiffs are the lawful owners and holders of said bonds in the amount hereinbefore alleged, and the beneficial end equitable owners of said judgment held by the defendant Central Trust Company of New York; and that the defendant Central Trust Company of New York has refused to bring this action after due demand by the 93
plaintiffs upon said defendant Central Trust Co. of N. Y., although the plaintiffs have offered proper indemnification to the said defendant Central Trust Company of New York, as such Trustee, to institute this suit to enforce the rights of the Trustee and of the bondholders under said judgment and guarantee made by said defendant

Metropolitan Street Railway Company as aforesaid.

WHEREFORE, the plaintiffs demand judgment:

1. That the transfer of said property, franchises and assets of the defendant Metropolitan Street Railway Company to the defendant New York Railways Company be adjudged null and void as against the Central Trust Company of New York as the holder of said deficiency judgment under said mortgage made by the said
95 Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, and as against the plaintiffs and such other bondholders secured by said mortgage as shall elect to come in and share the expenses of this action.

2. That the issue of stocks, bonds and other securities by the defendant, New York Railways Company pursuant to said "Plan and Agreement for the Re-organization of the Metropolitan Street Railway Company", dated November 29, 1911, be declared illegal, null and void as against said defendant Central Trust Company of New York,
96 the plaintiffs and said bondholders.

3. That all of the property, franchises and assets of the defendant New York Railways Company formerly owned by the defendant Metropolitan Street Railway Company, or acquired by said defendant New York Railways Company pursuant to said Plan and Agreement of Reorganization be declared to be subject to the lien of the said judgment obtained by the defendant Central Trust Company of New York against

said defendant Metropolitan Street Railway Co. in the sum of $1,745,344.21, together with interest thereon from the 20th day of February, 1912; and that said lien be declared to have priority over all other claims against said defendant New York Railways Company and the said franchises, property and assets of the defendant New York Railways Company, except mortgages placed thereon for a present valid consideration at the time of the re-organization of the defendant Metropolitan Street Railway Company as hereinbefore alleged. 98

4. That a receiver of said property, franchises and assets of said defendant New York Railways Company be appointed herein, and that the said property, franchises and assets acquired by said defendant New York Railways Company as aforesaid be sold under the judgment of this Court in this action, and that the proceeds thereof, after deducting said mortgage indebtedness and any other prior liens and charges which may be declared to be proper by this Court, or so much thereof as may be necessary, be applied to the payment of said judgment held by the defendant 99
Central Trust Company of New York; and that the said defendant Central Trust Company of New York be directed to pay over the moneys collected by it under such judgment to the plaintiffs and such other bondholders as shall come in and contribute to the expenses of this action, in the amounts of the bonds held by such respective bondholders, together with the unpaid coupons and accrued interest thereon.

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5. That the plaintiffs have such other and further relief as may be just; and for the costs of this action.

HORACE A. DOAN,
JOHN W. HAMER,
W. C. HEPPENHEIMER,
A. MERRITT TAYLOR,
CHARLES E. LOXLEY,
By A. S. GILBERT,
Their Solicitor.

A. S. Gilbert,
101 Solicitor for Plaintiffs,
Office & P. O. Address,
43 Exchange Place,
Borough of Manhattan,
New York City.

SOUTHERN DISTRICT OF NEW YORK,
STATE OF NEW YORK,
County of New York. } ss.:

HORACE A. DOAN, being duly sworn, says that he is one of the plaintiffs in this action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his
102 knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

HORACE A. DOANE.

Subscribed and sworn to before me this 9th day of Oct., 1913.

Francis Gilbert,
Notary Public,
New York County, N. Y.,
No.....

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Exhibit 'A"—Annexed to Complaint

Attached to and forming part of the bill of complaint is the same paper marked "Complainant's Exhibit 3" and printed in full in this record.

Answer of Defendant New York Railways Company to the Bill of Complaint.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK. 104

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN, and CHARLES E. LOXLEY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York as Trustee, Plaintiffs,	In Equity No. E-10-341.
against	105
NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY and CENTRAL TRUST COMPANY OF NEW YORK, Defendants.	

The defendant New York Railways Company, saving and reserving to itself all and all manner

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of benefit or advantage and exception, or otherwise, that may be had or taken to the many errors, uncertainties and imperfections in the Bill of Complaint herein contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

1.—This defendant denies knowledge or information thereof sufficient to form a blief as to each and very allegation contained in Paragraph I of
107 the Bill.

2.—This defendant admits the allegations contained in Paragraph II of the Bill.

3.—This defendant admits that it was incorporated on the 29th day of December, 1911; but this defendant denies that the purposes of its incorporation are correctly set forth in Paragraph III of the Bill; and this defendant alleges tht it was incorporated in conformity with the provisions of Section 9 of the Stock Corporation Law, for the purposes named and set forth in its Articles of Incorporation, and for no other purpose.
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4.—This defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragrph IV of the Bill, and demands that plaintiffs be required to make proof of the facts therein alleged.

5.—This defendant denies knowledge or information sufficient to form a belief to each and every allegation contained in Paragraph V of the Bill, and demands that plaintiffs be required to make proof of the facts therein alleged.

6.—This defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph VI of the Bill, and defendant demands that plaintiffs be required to make proof of the facts therein alleged.

7.—This defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph VII of the Bill, and demands that plaintiffs be required to make proof of the facts therein alleged.

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8.—This defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph VIII of the Bill, and demands that plaintiffs be required to make proof of the facts therein alleged.

9.—This defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph IX of the Bill, and demands that plaintiffs be required to make proof of the facts therein alleged.

10.—This defendant denies knowledge or information sufficient to form a belief as to each and 111
every allegation contained in Paragraph X of the Bill, and demands that plaintiffs be required to make proof of the facts therein alleged.

11.—This defendant denies each and every allegation contained in Paragraph XI of the Bill.

12.—This defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph XII of

the Bill, and demands that plaintiffs be required to make proof of the facts therein alleged.

13.—This defendant admits the allegations contained in Paragraph XIII of the Bill.

14.—This defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph XIV of the Bill, and demands that plaintiffs be required to make proof of the facts therein alleged.

113 15.—This defendant admits the allegations contained in Paragraph 15 of the Bill.

16.—This defendant admits that on or about the 29th day of September, 1896, the defendant Metropolitan Street Railway Company and the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company entered into an agreement by which the Metropolitan Street Railway Company was granted the right to operate cars over the tracks of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, but for the terms and legal effect of said contract, this defendant
114 begs leave to refer to the original to be produced upon the trial of this action; and this defendant denies that the allegations contained in Paragraph XVI of the Bill fully set forth the meaning and purport of said agreement.

17.—This defendant denies that the plaintiffs are the owners of bonds to the par value of One million, three hundred seventy-three thousand ($1,373,000) dollars, as set forth in Paragraph XVII of the Bill; and this defendant denies knowledge or information thereof sufficient to form a belief

as to each and every other allegation contained in Paragraph XVII of the Bill, and therefore demands that plaintiffs be required to make proof of the facts therein alleged.

18.—This defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in Paragraph XVIII of the Bill, and demands that plaintiffs be required to make proof of the facts therein alleged.

19.—The defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in Paragraph XIX of the Bill, except that this defendant admits that a certain action was commenced in the Supreme Court of the State of New York by the Attorney-General, and that in said action one Joseph B. Mayer was appointed a Receiver of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company. 116

20.—This defendant admits the allegation contained in Paragraph XX of the Bill.

21.—This defendant admits the allegations contained in Paragraph XXI of the Bill. 117

22.—This defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph XXII of the Bill, and demands that plaintiffs be required to make proof of the facts therein contained.

23.—This defendant admits the allegations contained in Paragraph XXIII of the Bill.

24.—This defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in Paragraph XXIV of the Bill, and demands that plaintiffs be required to make proof thereof.

25.—This defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in Paragraph XXV of the Bill, and demands that plaintiffs be required to make proof of the facts therein alleged.

119 26.—This defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in Paragraph XXVI of the Bill, and demands that plaintiffs be required to make proof of the facts therein alleged.

27.—This defendant denies knowledge or information thereof sufficient to form a belief as to each and every allegation contained in Paragraph XXVII of the Bill. This defendant therefore demands that plaintiffs be required to make proof of the facts therein alleged.

120 28.—This defendant admits that the property of the Metropolitan Street Railway Company was in the charge and custody of receivers appointed in insolvency proceedings prior to the sale thereof under the decrees of foreclosure. This defendant denies knowledge or information thereof sufficient to form a belief as to each and every other allegation contained in Paragraph XXVIII of the Bill, and therefore demands that plaintiffs be required to make proof of the facts therein alleged.

29.—This defendant admits that committees were formed by the bondholders to protect their interests, and by tort creditors to protect their interests, as set forth in Paragraph XXIX of the Bill; but this defendant denies that there was any committee formed to protect the interests of the stockholders, either in said property or on the reorganization thereof, except a committee composed of a very small minority interest of the stockholders of the Metropolitan Street Railway Company, organized for the purpose of enforcing the claim upon the stock of the Metropolitan Company based upon 122
the guarantee by the New York Company of dividends thereon. This defendant admits that the plan and agreement for reorganization of the Metropolitan Street Railway Company, annexed to said Bill as Exhibit "A," is a true copy of the original. This defendant denies knowledge or information thereof sufficient to form a belief as to each and every other allegation contained in Paragraph XXIX of the Bill, and demands that plaintiffs be required to make proof of the facts therein alleged.

30.—This defendant denies that all of the property and franchises of the defendant Metropolitan 123
Street Railway Company in the hands of said receivers were acquired by judicial sale for the purposes of said plan and agreement of reorganization, as set forth in Paragraph XXX of the Bill. This defendant admits that the property of the Metropolitan Street Railway Company covered by its said two mortgages, referred to in said Bill, was sold under foreclosure, and that such property of the Metropolitan Company as was covered by said mortgages was acquired by purchasers in fur-

therance of the plan of reorganization, and that defendant was organized under the Laws of the State of New York, and under the provisions of Sections 9 and 10 of the Stock Corporation Law of the State of New York, for the purpose of taking and possessing the property and franchises sold pursuant to the judicial sales, hereinafter set forth and referred to in the Bill of Complaint; and this defendant admits that the property so sold, as aforesaid, was, on the 1st day of January, 1912, transferred to this defendant, and that it is now in
125 possession of said property.

31.—This defendant admits that the property of the defendant Metropolitan Street Railway Company that was sold, pursuant to judgment of foreclosure set forth in the Bill, and acquired by the New York Railways Company, consists of an extensive system of street railways in the City of New York, with franchises, leases and other grants for the operation of such system of street railways. It also comprises equipment, power houses, car barns and real estate, and other property appertaining to or adapted for use in the operation or maintenance of such system of street railways,
126 together with all of the rights of the old securities acquired by said joint committee in exchange for new securities. This defendant denies each and every other allegation contained in Paragraph XXXI of the Bill.

32.—This defendant admits that the New York Railways Company, in consideration of the acquisition of the properties transferred to it by the purchasers under foreclosure, issued in payment for such property stock and bonds in the propor-

tions but not in the amounts set forth in Paragraph XXXII of the Bill. Except as herein admitted, defendant denies each and every allegation contained in Paragraph XXXII of the Bill.

33.—This defendant admits that no provision was made in said plan and agreement for reorganization of the Metropolitan Street Railway Company formulated by the bondholders of the said Company for the payment of any alleged claim of the plaintiffs, or claim by the Central Trust Company of New York; and this defendant admits 128
that no provision was made in the organization of this defendant for the adjustment or liquidation of any of said pretended claim on behalf of the plaintiffs, or on behalf of the Central Trust Company. This defendant admits that no stock, bonds or securities of this defendant were issued in payment for the liquidation or adjustment of said pretended claim, either to the plaintiffs or to the Central Trust Company; and this defendant alleges that at the time of making said plan of reorganization and the sale of the properties of the Metropolitan Street Railway Company, pursuant to judgment of foreclosure, and the acquisition 129
thereof by the New York Railways Company, and at the time of the reorganization and transfer to it of the property of the Metropolitan Street Railway Company, so sold as aforesaid, the pretended claim of the Central Trust Company and these plaintiffs had not been liquidated and its amount fixed and determined.

34. This defendant denies each and every allegation contained in Paragraph XXXIV of the Bill.

35. This defendant denies each and every allegation contained in Paragraph XXXV of the Bill.

36. This defendant admits that the Central Trust Company of New York holds the said alleged judgment against defendant Metropolitan Street Railway Company for the benefit of, and as Trustee for the holders of the bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company. This defendant denies each and every other allegation contained in Par-
131 agraph XXXVI of the Bill.

37. Further answering the Bill of Complaint herein, this defendant alleges that the defendant Central Trust Company of New York is the owner of the alleged judgment obtained against the Metropolitan Street Railway Company, set forth in Paragraphs XXV and XXVI of the Bill, on which the pretended claim of the plaintiffs is based, and that the said judgment was obtained for, and is held by said Central Trust Company of New York as Trustee, for the interests of all outstanding bonds secured by said mortgage, and each and every one of them, without priority or
132 preference; and defendant alleges that the Central Trust Company is a corporation organized under the Laws of the State of New York, and having its principal place of business in the City, County and State of New York. And defendant alleges that the interests of the plaintiffs, and all other security holders, and the interests of said defendant Central Trust Company of New York, are identical and in all respects similar to the interests of the plaintiffs, and all other owners or holders of bonds secured by the mortgage set forth in Paragraph XII of the Bill.

Defendant further alleges, on information and belief, that the complainants are not the sole owners and holders of One million, three hundred seventy-three thousand ($1,373,000) dollars, par value of bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, as set forth in Paragraph XI of the Bill, but that the said bonds were acquired pursuant to a so-called reorganization agreement, and that the beneficial ownership in said bonds are held by diverse persons unknown to this defendant.

Defendant further alleges that the parties to 134
this action should be re-aligned by the Court, and placed according to their interests in the subject-matter of this suit, and for the reasons hereinbefore alleged, and for diverse other reasons appearing on the face of the Bill upon the trial of this action, this defendant alleges that this Court is without jurisdiction to entertain this complaint, or to give judgment for the relief demanded therein.

38. Further answering the Bill of Complaint herein, this defendant alleges that on or about the 6th day of March, 1912, it made and executed to 135
the Guaranty Trust Company of New York its First Real Estate and Refunding Mortgage, securing its Thirty Year Four Per Cent. Gold Bonds, and that there were duly issued under and secured by said mortgage bonds of the par value of Sixteen million, two hundred ninety-five thousand, nine hundred forty-six ($16,295,946) dollars. This defendant further alleges that on or about the 6th day of March, 1912, it duly made and executed to the Farmers' Loan & Trust Company its adjustment mortgage securing its Thirty Year Five

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Per Cent. Income Gold Bonds, and that there are issued and outstanding bonds secured by said mortgage to the par value of Thirty million, six hundred twenty-six thousand, nine hundred seventy-seven ($30,626,977) dollars. This defendant further alleges that there are issued and outstanding shares of its capital stock having a par value of $17,495,060, and that said shares, or many of them, are held or purchased by various persons or corporations appearing upon the books of defendant, and that said persons or corporations, or
137 many of them, acquired said stock and interest without any knowledge of plaintiffs' pretended claim, and acquired said stock and securities by purchase, or otherwise, subsequent to said reorganization in said Bill set forth, and not in lieu of any right to subscribe and purchase said stock by virtue of the ownership or holding of any stock in the Metropolitan Street Railway Company; and this defendant alleges that the Guaranty Trust Company of New York and the Farmers' Loan & Trust Company, and each and every of the stockholders of defendant New York Railways Company, are proper and necessary parties to this
138 pretended claim, or cause of action, of plaintiffs, and that for such reason said Bill of Complaint is defective for want of proper parties before the Court.

39. Further answering the Bill of Complaint, this defendant alleges that the Metropolitan Street Railway Company, on or about the 1st day of February, 1897, made and executed its mortgage to the Guaranty Trust Company of New York to secure bonds issued hereunder to the par value of Twelve million, five hundred thousand ($12,500,-

000) dollars, and that said bonds to the par value of such amount were issued and outstanding to bona fide owners for value; and that on or about the 21st day of March, 1902, the defendant Metropolitan Street Railway Company made and issued its refunding mortgage to the Morton Trust Company to secure bonds to be issued thereunder, and that there were actually issued thereunder and secured by said mortgage bonds to the par value of Sixteen million, six hundred and four thousand ($16,604,000) dollars. This defendant further alleges that at and prior to the making of either of 140
said mortgages various of the surface railroads owned or controlled by the said Metropolitan Street Railway Company had made and issued from time to time mortgages upon their properties securing the issue of bonds, and there were actually issued under said several mortgages, and outstanding in the hands of the bona fide owners for value, bonds (including those issued by the Metropolitan Street Railway Company, as hereinbefore set forth) to the par value of Fifty-seven million, two hundred eighty-five thousand ($57,285,000) dollars, and that the companies had outstanding capital stock in the hands of bona fide 141
owners for value representing interests in said property to the par value of Fifteen million, nine hundred thousand ($15,900,000) dollars, not including any capital stock issued by the Metropolitan Street Railway Company. This defendant further alleges that Metropolitan Street Railway Company defaulted on the payment of interest due on said mortgage to the Guaranty Trust Company on February 1, 1908, and in the interest payments under said refunding mortgage to the Morton Trust Company for the interest payments due

April 1, 1908; and that thereafter the said Guaranty Trust Company commenced, in the Circuit Court of the United States for the Southern District of New York, an action to foreclose the mortgage made to said Guaranty Trust Company; and that thereafter the Farmers' Loan & Trust Company, as successor to the Morton Trust Company, commenced an action in the Circuit Court of the United States for the Southern District of New York, to foreclose the mortgage to the Morton Trust Company, herein set forth; and that such
143 proceedings were had in said Circuit Court; that on April 6, 1910, a decree of foreclosure and sale was duly entered in the action wherein the Guaranty Trust Company of New York was complainant, and on May 31, 1910, a decree of foreclosure and sale was duly entered in the action wherein the Farmers' Loan & Trust Company was complainant; and that on November 2, 1910, a supplemental decree of foreclosure and sale was duly entered in said action wherein the Farmers' Loan & Trust Company was complainant; that from said supplemental decree of November 2, 1910, an appeal was taken by a committee of stockholders,
144 known as the Waterbury Committee, representing the minority stockholders, in which appeal the provisions of the supplemental decree were contested by said committee, and resulted in a decision favorable to the committee; and that thereafter, on December 26, 1911, a decree was entered in the Circuit Court on mandate from the Circuit Court of Appeals, and that said decree, or any of the said decrees herein referred to, were not entered pursuant to any consent, agreement, or arrangement with the stockholders of the Metropolitan Street Railway Company, or with any other

parties or creditors, nor were they entered into pursuant to any consent, agreement or arrangement providing for the reorganization of said railroads, or providing for any recognition of the rights of any stockholders of the Metropolitan Street Railway Company in any reorganization. Thereafter, to wit, on or about the 29th day of December, 1911, pursuant to said decrees, the Special Master sold all of the property of the Metropolitan Street Railway Company to Guy E. Tripp, Alexander J. Hemphill and Edwin S. Marston.
Defendant further alleges that said Special Mas- 146
ter, on December 29, 1911, filed his report of sale in the office of the Clerk of the Circuit Court of the United States; that on said day the decree confirming said report was duly entered; and on said day, December 29, 1911, said Special Master made and executed his deed to the purchasers of said property. Defendant further alleges that on December 30, 1911, said Guy E. Tripp, Alexander J. Hemphill and Edwin S. Marston duly conveyed to this defendant all of the property so purchased under the said several decrees of foreclosure hereinbefore set forth. This defendant further alleges
that on January 12, 1912, an order and decree 147
was entered authorizing the delivery of an assignment and transfer to the New York Railways Company all of the property purchased by said purchasers aforesaid, at said foreclosure sale, vesting all of their right, title and interest in or to said property in the New York Railways Company, and that said decree enjoined and restrained all parties to said foreclosure proceedings, and all persons claiming under them, or any of them, or under any order or decree heretofore made in said cause, from in any way interfering with the posses-

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sion of the New York Railways Company in and to any and all of the property directed to be sold by said decrees of foreclosure, as aforesaid. Defendant further alleges that said property covered by said several mortgages, and included within the decrees of foreclosure, as aforesaid, were sold to the purchasers and to the New York Railways Company, free and clear of any lien, claim or interest in any party outstanding, except the interests of bonds and stockholders, set forth in subdivisions 1 to 21 of Schedule A of the Plan of Re-
149 organization, attached to the complaint, and subject to the interests of the outstanding stockholders and security holders, set forth in subdivisions 1 to 13 of Schedules B and C of the Plan of Reorganization, attached to said complaint. And that each and every of said proceedings, actions and decrees of said Circuit Court, were duly had pursuant to law, under and by virtue of the Laws of the State of New York, and by said decrees and sale all interests of all parties other than those hereinbefore specially excepted, were divested of any and all interest in said property, or any and all claim right, or title to claim for reimbursement therefrom.

150 This defendant alleges that the order of March 20, 1909, made on petition of Central Trust Company in the foreclosure proceedings, referred to in Paragraph XXIII of the Bill of Complaint, authorized the defendant Central Trust Company to join the Metropolitan Street Railway Company as party-defendant in its foreclosure action referred to in said paragraph, and liquidate any claim said Central Trust Company had against the Metropolitan Street Railway Company; and that at that time and thereafter, on August 3, 1911, by ob-

taining leave to file a claim against the Metropolitan Street Railway Company, the said defendant Central Trust Company became a party to such foreclosure proceedings pending against the Metropolitan Street Railway Company; that thereafter the said defendant, on October 23, 1911, obtained an extension of time to file its claim based on said alleged deficiency judgment against defendant Metropolitan Street Railway Company, and thereafter it duly filed its claim against the estate of the Metropolitan Street Railway Company for the amount of said deficiency judgment 152
set forth in Paragraph XXV of the Bill, and duly made claim for payment of said deficiency judgment out of the property and estates of the Metropolitan Street Railway Company, and proceedings were duly had whereby said claim was disallowed by the Special Master; and said report disallowing said claim against the estate of the Metropolitan Street Railway Company was confirmed by an order of the Circuit Court for the Southern District of New York, duly entered in the office of the Clerk of said Court on October 6, 1913. And defendant alleges that said proceedings determined that said deficiency judgment, set 153
forth in Paragraph XXV of the Bill, did not constitute a claim against, or a lien on, or an interest in any of the property rights or estate of the Metropolitan Street Railway Company. And this defendant further alleges that by petitions filed by the Central Trust Company, a defendant in this action, in the insolvency proceedings pending against the Metropolitan Street Railway Company in the Circuit Court of the United States for the Southern District of New York, and by orders made therein, pur-

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suant to such petitions, on the 20th day of March, 1909, the 3d day of August, 1911, and the 23d day of October, 1911, said defendant Central Trust Company became a party to the said several foreclosure proceedings then pending against the Metropolitan Street Railway, and had notice of the making of the Plan of Reorganization by the bondholders of the Metropolitan Street Railway Company, as set forth in the Bill of Complaint, and had notice of the sale of the property of the Metropolitan Street Railway Company, under and
155 pursuant to said several decrees of foreclosure, hereinbefore referred to in this answer, and had notice of the purchase thereof by the purchasing committee of the bondholders, and notice of the sale of all of said property to this defendant, and that said Central Trust Company stood by and allowed said sale to be made without any objection or claim of any interest in the property so sold, or without any claim for right to participate in said reorganization, or without making any claim that it should be allowed to participate in said reorganization, or to have securities issued to it for its pretended claim, and that said Central Trust
156 Company, as the owner and holder of said deficiency judgment, was guilty of laches in so doing; and that said Central Trust Company, and the bondholders secured by the mortgage of which it is trustee, and each of them by not making known their claim in or to any of the property of the Metropolitan Street Railway Company, or their pretended claim or right to payment from said property, or their pretended claim to be represented in and participate in any reorganization of the property of the Metropolitan Street Railway Company, are estopped from now asserting said claim or claims against this defendant.

40. This defendant further alleges that the Plan of Reorganization set forth in the Bill of Complaint, and the making of the mortgages of the New York Railways Company, and the issue of bonds thereunder, as hereinbefore set forth, and the issue of its capital stock to the par value of Seventeen million, five hundred thousand ($17,500,000) dollars, was duly approved by the Public Service Commission for the First District, as provided by the Laws of the State of New York; and defendant alleges that in said proceeding before the Public Service Commission, said Commission 158 determined that the value of the properties acquired by the New York Railways Company was not in excess of the face value of the first mortgage and income mortgage bonds, and the face value of stock and bonds constituting prior liens upon said property, as hereinbefore set forth, and that the property acquired by the New York Railways Company by the proceedings herein set forth was not in excess of the bonds issued in exchange therefor, including the face value of prior liens, mortgages, funded debts, and stocks of the constituent companies forming that portion of the Metropolitan Street Railway System that was 159 sold, as aforesaid. And defendant further alleges that said Plan of Reorganization attached to said Bill of Complaint was made under authority of Sections 9 and 10 of the Stock Corporation Law solely by the bondholders of Metropolitan Street Railway Company, and solely in their interest, without any regard to the rights or interests of the stockholders of the Metropolitan Street Railway Company in and to said properties, and that there was no contract, agreement, stipulation or understanding between said stockholders of the

Metropolitan Street Railway Company and the bondholders of said company, either at the time of publishing said plan of reorganization, or before or after the sale, or at any time, whereby said Metropolitan Street Railway Company's stockholders should be given any right, title or interest in and to said properties upon reorganization, except the right under said reorganization plan upon a deposit of their stock in the old company with the bondholders committee to purchase securities of the new company for a cash payment.

161 41. Further answering the Bill of Complaint, this defendant alleges that the plaintiffs in this action were the purchasers of the property of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company sold under foreclosure, as set forth in Paragraph XXVI of the Bill, and that they are now the owners of said property; and this defendant alleges that the property so purchased was greatly in excess of the sum of Fifty thousand ($50,000) dollars, and is worth upwards of the sum of Seven hundred thousand ($700,000) dollars, and that the price of Fifty thousand ($50,000) dollars paid, as alleged in 162 said Paragraph XXVI of the Bill, is a totally inadequate price; and the defendant further alleges that any claim, or pretended claim, based on said deficiency judgment, if any there be, should be reduced by at least the value of the property so purchased and acquired by the plaintiffs in this action.

All of which this defendant stands ready upon the hearing of this cause, and according to the rules and practice of this Honorable Court to

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maintain and prove as this Honorable Court may direct, and it prays to be dismissed hence with its reasonable costs.

NEW YORK RAILWAYS COMPANY,

By H. M. FISHER,
Secretary.

[Corporate Seal]

JAMES L. QUACKENBUSH,
Solicitor for Defendant,
New York Railways Company,
165 Broadway,
Borough of Manhattan,
New York City.

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RICHARD REID ROGERS,
ALBERT J. KENYON,
Counsel.

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STATE OF NEW YORK, }
County of New York, } ss.:

H. M. FISHER, being duly sworn, deposes and says: That he is Secretary of the defendant New York Railways Company; that he has read the foregoing Answer, and that the same is true to his knowledge, except as to the matters alleged upon information and belief, and as to those matters he believes it to be true.

The reason this verification is made by deponent
167 and not by the defendant is that the defendant is a railroad corporation, and deponent is its Secretary, and that his knowledge and information, on which the allegations are made, were obtained from books, records and documents in the possession of defendant, New York Railways Company.

H. M. FISHER.

Sworn to before me this 10th }
day of December, 1913. }

J. C. NORRIS,
168 Notary Public,
New York County No. 2777.
Certificate filed in Register's Office,
New York County No. 5029.
[Notary Seal]

NEW YORK RAILWAYS COMPANY, et al. 169

Answer of Defendant Central Trust Company of New York.

DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF NEW YORK.

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN, and CHARLES E. LOXLEY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York as Trustee, Plaintiffs, 170

against

NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY and CENTRAL TRUST COMPANY OF NEW YORK, Defendants. No. E-10—341

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The defendant CENTRAL TRUST COMPANY OF NEW YORK, for answer to the bill of complaint herein, says:

FIRST. This defendant admits the allegations contained in paragraphs IV, V, VI, VII, VIII, IX and X, and on information and belief admits the allegations contained in paragraphs I, II, III and XI of the bill of complaint.

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SECOND. This defendant admits the allegations contained in paragraph XII of the bill of complaint, and this defendant begs leave to refer to the original of said mortgage to be produced upon the trial of this cause for an exact statement of the terms and provisions of said mortgage.

THIRD. This defendant admits the allegations contained in paragraphs XIII and XIV of the bill of complaint.

173 FOURTH. This defendant admits the allegations contained in paragraph XV of the bill of complaint, except that it denies that the said mortgage was thereafter duly recorded in the office of the Clerk of the County of New York, and alleges that the said mortgage was thereafter duly recorded in the office of the Register of the County of New York.

FIFTH. This defendant admits the allegations contained in paragraphs XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV and XXVI, and on information and belief admits the allegations contained in paragraph XVI of the bill of
174 complaint.

SIXTH. This defendant admits the allegations contained in paragraph XXVII of the bill of complaint, which allege that no part of said judgment, or the accrued interest thereon, has been paid, and that the whole of said judgment and all of said bonds and coupons and accrued interest remain unsatisfied and unpaid, except that this defendant alleges the sum of $28.19 was paid out of the proceeds of sales on account of the amount

due thereon upon each bond with coupon of October, 1909, and all subsequent attached.

SEVENTH. This defendant admits the allegations contained in paragraph XXVIII, and on information and belief admits the allegations contained in paragraphs XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXV and XXXVI of the bill of complaint.

FURTHER ANSWERING the bill of complaint, this defendant alleges that the installments of interest 176
which matured upon the bonds of Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company on October 1, 1907, and April 1, 1908, were duly paid by Adrian H. Joline and Douglas Robinson as Receivers of the Metropolitan Street Railway Company, and that default was made in the payment of the installment of interest which matured on October 1, 1908, and that by order filed March 20, 1909, in a suit wherein Morton Trust Company, as Trustee, was complainant, and Metropolitan Street Railway Company and others were defendants, upon the petition of Central Trust Company of New York, as Trustee un- 177
der the mortgage of Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, and on notice to parties thereto and the Receivers of the Metropolitan Street Railway Company, it was ordered

> "That so much of the prayer of said petition as begs leave to join the Metropolitan Street Railway Company as a party defendant to said foreclosure action be and the same hereby is granted, and Central

Trust Company of New York, as Trustee under said mortgage of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company is hereby permitted to join as a party defendant in said foreclosure action said Metropolitan Street Railway Company.

"It is further ordered that the claim of the Central Trust Company of New York, as Trustee, upon the guaranty of the Metropolitan Street Railway Company, as set
179 forth in the said petition may be liquidated in the above named foreclosure action."

This defendant further alleges that thereupon and on April 21, 1909, prior to the recovery of the deficiency judgment set forth in the bill of complaint and the liquidation of its claim against the Metropolitan Street Railway Company, this defendant, as trustee under the mortgage of Twenty-eighth and Twenty-ninth Streets Crosstown Rairoad Company, filed a claim against the Metropolitan Street Railway Company based upon the guaranty by Metropolitan Street Railway Com-
180 pany of the bonds of Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, with William L. Turner, Esq., Special Master. That by various intermediate orders made in the case wherein Morton Trust Company was complainant, and Metropolitan Street Railway Company was defendant, the time of the Central Trust Company of New York, as such trustee, to file a certified copy of the deficiency judgment against Metropolitan Street Railway Company pursuant to the order entered in said suit on or about March 20,

1909, was extended to and including January 30, 1912.

A transcript of the deficiency judgment entered against Metropolitan Street Railway Company and Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company in the sum of $1,754,344.21 in the foreclosure suit mentioned in the bill of complaint wherein Central Trust Company of New York, as trustee, was plaintiff, and Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and Metropolitan Street Railway Company were defendants, was filed with 182
William L. Turner, Esq., Special Master, on January 23, 1912, within the time prescribed by said order. Objections were filed to said claim by the receivers of Metropolitan Street Railway Company, and hearings were had thereon, and the said Special Master thereafter, on or about July 7, 1913, duly filed in this Court his report dismissing the claim of Central Trust Company of New York, as trustee under the mortgage of Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company dated October 1, 1896, as one which was contingent on January 15, 1908, and therefore not provable in the said proceeding 183
against the estate of the Metropolitan Street Railway Company in a class with fixed obligations. Exceptions were filed on behalf of Central Trust Company of New York, as trustee as aforesaid, to the findings and conclusions of said Special Master, and the same duly came on for hearing on or about August 12, 1913. By order of this Court dated October 6, 1913, the said exceptions filed as aforesaid were overruled and Special Master's report was confirmed and the claim dismissed as directed in said report.

184 WHEREFORE, this defendant demands judgment as follows:

1. That the transfer of said property, franchises and assets of the defendant Metropolitan Street Railway Company to the defendant New York Railways Company be adjudged null and void as against this defendant, and as against the plaintiffs and such other bondholders secured by said mortgage as shall elect to come in and share the expenses of this action.

185 2. That all of the property, franchises and assets of the defendant New York Railways Company formerly owned by the defendant Metropolitan Street Railway Company, or acquired by said defendant New York Railways Company pursuant to said Plan and Agreement of Reorganization be declared to be subject to the lien of the said judgment obtained by this defendant against said defendant Metropolitan Street Railway Company in the sum of $1,745,344.21, together with interest thereon from the 20th day of February, 1912; and that said lien be declared to have priority over all other claims against said
186 defendant New York Railways Company and the said franchises, property and assets of the defendant New York Railways Company, except mortgages placed thereon for a present valid consideration at the time of the reorganization of the defendant Metropolitan Street Railway Company as hereinbefore alleged.

3. That a receiver of said property, franchises and assets of said defendant New York Railways Company be appointed herein, and that the said

property, franchises and assets acquired by said defendant New York Railways Company as aforesaid be sold under the judgment of this Court in this action, and that the proceeds thereof, after deducting said mortgage indebtedness and any other prior liens and charges which may be declared to be proper by this Court, or so much thereof as may be necessary, be applied to the payment of said judgment held by this defendant.

4. That the plaintiffs and this defendant have such other and further relief as may be just, and 188
that this defendant have its costs in this action.

CENTRAL TRUST COMPANY OF NEW YORK,

By JOLINE, LARKIN & RATHBONE,
Its Solicitors,
Office & P. O. Address,
54 Wall Street,
Manhattan, New York City.

ARTHUR H. VAN BRUNT,
Of Counsel.

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STATE OF NEW YORK,
County of New York, } ss.:

H. FRANCIS HYDE, being duly sworn, deposes and says that he is a resident of the City, County and State of New York, and is one of the Vice-Presidents of Central Trust Company of New York, one of the defendants herein; that he has read the foregoing answer and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to

those matters he believes it to be true; that the reason this verificaiton is not made by the Central Trust Company of New York, one of the defendants herein, is that said defendant is a domestice corporation, and that deponent is an officer thereof, to wit, one of the Vice-Presidents.

E. FRANCIS HYDE.

Sworn to before me this 22d day of January, 1914.

191 R. HAROLD BAGNELL,
Notary Public,
Kings County No. 299,
Certificate filed in New York County,
No. 100.

Plaintiff's Exhibit 1.

CERTIFICATE OF INCORPORATION

OF

192 NEW YORK RAILWAYS COMPANY.

Dated December 29, 1911.

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, pursuant to the judgment and decree of the Circuit Court of the United States for the Southern District of New York, entered and filed in the office of the Clerk of said Court, on and bearing date the 6th day of April, 1910, in a cer-

tain cause then pending in said Court in which Guaranty Trust Company of New York was complainant and the Metropolitan Street Railway Company, a domestic stock corporation organized and existing under the Railroad law of the State of New York, and others, were defendants, to enforce and foreclose the lien of a certain mortgage or deed of trust, dated February 1, 1897, known as the "General and Collateral Trust Mortgage" made by said Metropolitan Street Railway Company to Guaranty Trust Company of New York, Trustee, and also pursuant to the judgment and 194
decree of said Court entered and filed in the office of the Clerk of said Court on and bearing date the 31st day of May, 1910, and to the decree supplementary thereto entered and filed in said office on the 2nd day of November, 1910, as modified by a decree of said Court entered and filed in the office of the Clerk of said Court on and bearing date the 26th day of December, 1911, all in a certain other cause then pending in said Court in which The Farmers' Loan and Trust Company, successor of Morton Trust Company, was complainant, and said Metropolitan Street Railway Company and others, were defendants, to enforce 195
and foreclose the lien of a certain mortgage or deed of trust, dated March 21, 1902, called the "Refunding Mortgage," made by said Metropolitan Street Railway Company to Morton Trust Company, Trustee, the property and franchises of said Metropolitan Street Railway Company were duly sold on the 29th day of December, 1911, by William L. Turner, sq., Special Master, appointed by the said Court in and by said several decrees, to Guy E. Tripp, Alexander J. Hemphill and Edwin S. Marston (herein called the Purchasers),

and said sales were severally duly confirmed by said Court on the 29th day of December, 1911, and said property and franchises were thereupon duly granted, assigned and conveyed to said Purchasers by said Special Master by deeds dated December 29, 1911, and said Purchasers have thereby acquired title to said property and franchises in the manner prescribed by law; and

WHEREAS, the said Guy E. Tripp, Alexander J. Hemphill and Edwin S. Marston have associated
197 with themselves the following named persons (hereinafter sometimes referred to as associates), namely Charles F. Matthewson, Benjamin S. Harmon, Joseph P. Cotton, Jr., J. Frederick Eagle, Charles Richter, James A. Potter, Rudolph G. Lamy, Albert W. Hemphill, Edward J. Patterson, Harry A. Jacot, D. Joseph Palmer, Albert J. Kenney, Henry R. Wohlers, Matthew T. Murray, Jr., Kenneth K. Ward, all of whom are citizens of the United States, and at least one of whom is a resident of the State of New York, and the said Purchasers and their associates desire to become a corporation pursuant to the laws of the State of New York, and as such to take
198 and possess the property and franchises thus sold and so purchased and which were at the time of said sales possessed by the Metropolitan Street Railway Company (hereinafter sometimes referred to as the Metropolitan Company), subject, however, to all of the terms and provisions of said decrees; and

WHEREAS, under and by virtue of a certain bondholders agreement, dated March 5th, 1908 (herein referred to as the Five Per Cent. Agree-

ment), for the protection of the holders of the General and Collateral Trust Mortgage Five Per Cent. Bonds of the Metropolitan Company (herein referred to as the Five Per Cent. Bonds), Alexander J. Hemphill, Donald Mackay, Edward H. Ladd, Jr., William P. Dixon and Henry Evans were constituted a Committee of the holders of said Five Per Cent. Bonds (hereinafter referred to as the Five Per Cent. Committee); and

WHEREAS, under and by virtue of a certain other Bondholders agreement, dated November 200
25th, 1907 (herein referred to as the Four Per Cent. Agreement), for the protection of holders of the Four Per Cent. Refunding One Hundred Year Gold Mortgage Bonds of the Metropolitan Company (herein referred to as the Four Per Cent. Bonds), Edwin S. Marston, Edwin M. Bulkley, Robert Y. Hebden, Otto H. Kahn and Guy E. Tripp were constituted a Committee of the holders of said Four Per Cent. Bonds hereinafter referred to as the Four Per Cent. Committee; and

WHEREAS, the Five Per Cent. Committee and 201
the Four Per Cent. Committee were each under the agreements by which they were respectively constituted, empowered to purchase or cause to be purchased at the foreclosure sales hereinafter referred to, the properties of the Metropolitan Company, and to formulate a plan for and carry out the reorganization of the Metropolitan Company; and

WHEREAS, by appropriate action and resolution of the said Five Per Cent. Committee and of the said

Four Per Cent. Committee, a committe composed of members respectively of the said Five Per Cent. Committee and of the said Four Per Cent. Committee, to wit, Guy E. Tripp, Edward H. Ladd, Jr., Otto H. Kahn and William P. Dixon, and Alexander J. Hemphill, Chairman of said Five Per Cent. Committee, *ex officio*, and Edwin S. Marston, Chairman of said Four Per Cent. Committee, *ex officio*, was created and constituted under the name any style of Joint Committee on Reorganization of the Metropolitan Company,
203 which committee is hereinafter called the Joint Committee; and

WHEREAS, previous to said several sales the said Joint Committee, in pursuance of the powers conferred upon the Five Per Cent. Committee and the Four Per Cent. Committee by the respective agreements constituting said Committees, and by and with the authority and approval, properly evidenced, of the Five Per Cent. Committee and the Four Per Cent. Committee, duly formulated and adopted a Plan and Agreement, dated November 29, 1911, as provided in section 10 of the said Stock Corporation Law, for the reorganization of
204 said Metropolitan Company and for or in anticipation of the readjustment of the respective interests of holders of such Five Per Cent. and Four Per Cent. Bonds and of creditors and stockholders of said Metropolitan Company, the corporation and stockholders of said Metropolitan Company, the corporation owning the property and franchises thus sold at the time of said several sales, and of holders of claims for injuries or damages sustained in and about the operation, maintenance or construction of any or all the property formerly

owned by or leased to said Metropolitan Company, and for the representation of such interests in the bonds and stock of a new corporation to be formed by the Purchasers and their associates; and the Five Per Cent. Committee and the Four Per Cent. Committee each by due action approved and adopted said Plan as its own with the same force and effect as if each said Committee, or said two Committees jointly, had promulgated the Plan in the exercise of the power and authority vested in the Five Per Cent. Committee by the said bondholders' agreement of March 5th, 1908, and 206
in the Four Per Cent. Committee by the said bondholders' agreement of November 25, 1907, and the Joint Committee, under the terms of said Plan and Agreement of Reorganization thereupon became and was authorized and empowered to acquire or cause to be acquired title to said property and franchises for the purpose of carrying out said Plan and Agreement of Reorganization; and

WHEREAS, by an Agreement of Readjustment, dated December 27, 1911, by and between the Five Per Cent. Committee, the Four Per Cent. Committee and the Joint Committee, for and in support of the readjustment, in accordance with said 207
Plan and Agreement of November 29, 1911, of the respective interests of creditors, mortgagees and stockholders of the Metropolitan Company and holders of claims for injuries or damages sustained in and about the operation, maintenance or construction of any or all the property formerly owned or leased to said Metropolitan Company, and for the representation of such interests in the bonds and stock of the new corporation to be formed under and pursuant to the laws of the

State of New York upon the acquisition by the Purchasers of said property and franchises at said foreclosure sales, the Joint Committee pursuant to the powers vested in it by said Plan and Agreement duly appointed said Guy E. Tripp, Alexander J. Hemphill and Edwin S. Marston and the survivor or survivors of them to act as a purchasing committee to bid for and to purchase at such foreclosure sales the property and franchises of the Metropolitan Company and to receive deeds conveying the same to said Purchasers
209 as joint tenants and not as tenants in common; and

WHEREAS, in and by such Plan and Agreement of Reorganization and said Agreement of Readjustment it was provided, among other things, that said new corporation should issue or deliver its stock and bonds to said Joint Committee, or upon the order of said committee, as follows:

$16,768,100, face value, of its Thirty-Year First Real Estate and Refunding Mortgage Four Per Cent. Gold Bonds, bearing interest from January 1, 1912, and from time to time, any additional
210 amount of said bonds which the Joint Committee, in its discretion, may deem necessary to raise any additional moneys which may be required to comply with the terms of said foreclosure decrees, to carry out the reorganization, or to carry out the purposes or discharge the liabilities of the reorganization, and to pay the expenses in the Plan provided for, but not exceeding the face value of $2,000,00 in the aggregate; all of which bonds are to be secured by a mortgage which may or may not specify a limitation in respect of the amount

of the authorized issue. Additional bonds secured by said mortgage may be issued from time to time subject to the provisions and restrictions in said mortgage set forth. Said First Real Estate and Refunding mortgage bonds shall be redeemable on any interest day on and after January 1, 1916, upon twelve weeks' notice, at 105% of the face value thereof and accrued interest; and

$31,933,400, par value, of its Thirty-Year Adjustment Mortgage Five Per Cent. Income Gold Bonds (subject to said First Real Estate and Refunding Mortgage), bearing interest from January 1, 1912, which bonds are to be a part of a total authorized issued of similar bonds limited to an aggregate principal sum not exceeding $33,000,000, at any one time outstanding, and are to be secured by a mortgage or deed of trust called the Adjustment Mortgage, covering all the property of the new corporation then or thereafter subject to the prior lien of the First Real Estate and Refunding mortgage. The additional bonds secured by said Adjustment Mortgage may be issued subject to the provisions and restrictions in said mortgage set forth. Said Real Estate and Refunding Mortgage and said Adjustment Mortgage, and the bonds to be issued thereunder, shall each and all be in such form as the said Joint Committee may prescribe or approve. Said Adjustment Mortgage Bonds in whole but not in part shall be redeemable on any of the dates to be specified in that behalf in said bonds and Adjustment Mortgage upon twelve weeks' notice at the face value thereof and on payment of $25 on each $1,000 of said bonds, as and for accrued interest thereon; and

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$17,500,000, par value, of the full paid non-assessable shares of its capital stock; and

WHEREAS, said Plan and Agreement of Reorganization and Agreement of Readjustment provide for and regulate voting by the holders and owners of said Adjustment Mortgage Bonds, which right of voting is to be exercised in the manner and for the period and upon the conditions hereinafter set forth;

215 NOW, THEREFORE, pursuant to said Plan and Agreement of Reorganization and to said Agreement of Readjustment and in conformity with the provisions of Section 9 of the Stock Corporation Law of the State of New York in such case made and provided, we, the undersigned being the said Purchasers and their aforesaid associates, do hereby certify as follows:

I.—The name of the corporation intended to be formed by the filing of this certificate is NEW YORK RAILWAYS COMPANY, and the place where its principal office is to be located is in the Borough of Manhattan in The City of New York.

216 II.—The maximum amount of the capital stock of the new corporation intended to be formed by the filing of this certificate is $17,500,00, and the number of shares into which such capital stock is to be divided is 175,000 shares of the par value of $100 each, all of which shares shall be one class and shall be common stock.

III.—The directors of the corporation need not be holders of any of the shares of said capital stock and the number thereof shall at all times be

and remain odd. The number of directors who shall manage the affairs of the new corporation intended to be formed by the filing of this certificate is nine (9) and the names and post-office addresses of the directors for the first year, at least one of whom is a resident of the State of New York, are as follows:

Names.	Addresses.
Guy E. Tripp,	147 Milk Street, Boston, Mass.
Alexander J. Hemphill,	28 Nassau St., New York City, N. Y.
Edwin S. Marston,	22 William St., New York City, N. Y.
Charles F. Matthewson,	55 Wall St., New York City, N. Y.
Joseph P. Cotton, Jr.,	32 Liberty St., New York City, N. Y.
J. Frederick Eagle,	55 Wall St., New York City, N. Y.
Albert W. Hemphill,	5 Nassau St., New York City, N. Y.
Edward J. Patterson,	55 Wall St., New York City, N. Y.
Charles Richter,	55 Wall St., New York City, N. Y.

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IV.—The holders of said $31,933,400, face amount, of Adjustment Mortgage Bonds to be issued by the new corporation or such lesser or greater amount of such bonds as shall be from time to time and at any time outstanding, shall have the right and power of voting until full interest at the rate of five per cent. per annum shall have been paid to all said holders in and during each calendar year for three successive years, and

again thereafter for and during a like period whenever a failure to pay interest aggregating $50 for each $1,000 of said bonds during any calendar year shall occur, as and to the extent following, to wit: By the vote of a majority in amount thereof present or represented at any meeting of the corporation or its stockholders held for the purpose, to elect one less than a majority of the members of the Board of Directors of the corporation as the number of said directors is hereby or may at any time hereafter be fixed;
221 and during the period that the aforesaid voting power is operative, the holders of said outstanding bonds shall also have the right to vote at all meetings of the corporation or its stockholders, in respect of all other questions upon which such stockholders may be entitled to vote. Each such bondholders shall be entitled to one vote for each $100 of the principal of the bonds held by him. The voting power of the holders of said Adjustment Mortgage Bonds, shall include all voting power in respect of or power to consent to proposed corporate action vested or to be vested in stockholders under the Railroad Law, the Stock Corporation Law, or any other applicable law of
222 the State of New York now or hereafter enacted. Said bondholders may exercise their right to vote in person or by proxy. The right of said bondholders, or their proxies, to vote shall be established as follows:

The right of holders of registered Adjustment Bonds without coupons or of registered coupon bonds to so vote or consent, shall be established by the book of registration of such bonds to be kept by a bond registrar to be appointed by the corporation, or by a list of such registered bond-

holders stating the amounts of each class of bonds registered in their respective names, such list being certified by such bond registrar. The right of holders of coupon bonds registered only for voting purposes to so vote or consent, shall be established by a book of registry to be kept by the corporation for the registration of such bonds for voting purposes, or by a list of the persons so registered for voting purposes, stating the serial numbers of the coupon bonds registered for voting purposes in their respective names, such list being certified by the agent appointed by the corporation to register such bonds for voting purposes. The Board of Directors may order such book for the registry of coupon bonds for voting purposes only, and also the book for the registration or registered Adjustment Bonds, to be closed for any period not exceeding twenty days previous to any stockholders' meeting, for and during which period no such coupon bond shall be registered for voting purposes and the voting power of no registered bond shall be transferred. Upon the production of unregistered coupon bonds to the agent appointed by the corporation to register coupon bonds for voting purposes, such agent shall (except in any period during which the books shall have been so ordered to be closed) register for voting purposes the serial numbers and description of such bonds and the name designated by the person producing such bonds and the date of such registration, in a book to be kept for that purpose, and thereupon, until such bonds shall be so registered in another name, only the person so registered shall be entitled to vote upon such bonds. Such register shall be open to the inspection of Adjustment bondholders and stockholders of the corporation.

Said books of registry and such certified lists shall be conclusive and the only evidence of the right of Adjustment bondholders to vote at any meeting.

V.—Each and every holder of any certificate representing a share or shares of the capital stock of the corporation by the acceptance of said certificate irrevocably consents to, ratifies and confirms the execution and delivery of the said Thirty-Year First Real Estate and Refunding
227 Mortgage and said Thirty-Year Adjustment Mortgage and the issue and delivery to or upon the order of said Joint Committee of the bonds to be issued under and secured by said mortgages in the respective amounts thereof hereinbefore set forth.

VI.—A brief description of the property and franchises so sold and acquired is as follows:

The lines of street railway, together with the power houses, car barns, cars, equipment, appliances and appurtenances in the borough of Manhattan, in the City of New York, formerly belong-
228 ing to or leased or operated by the Metropolitan Street Railway Company, the lines thus owned being situate upon various avenues and other public places, among others, in the said borough of Manhattan, or upon parts of said streets, avenues and other public places, to wit: On Broadway, West Broadway, State Street, Whitehall Street, Bowling Green, Trinity Place, Union Square, Church Street, South Fifth Avenue, Great Jones Street, Washington Square, Delancey Street, Madison Street, Jackson Street, Cherry Street, East Street,

South Street, James Slip, Montgomery Street, Ridge Street, Pitt Street, Gouverneur Street, Bowery, First Avenue, Greenwich Street, Battery Place, Banks Street, Greenwich Avenue, Eighth Avenue, Fourth Avenue, Broome Street, Sullivan Street, Horatio Street, Chambers Street, New Chambers Street, Ferry stands, Duane Street, Spring Street, Prince Street, Houston Street, Charlton Street, Watts Street, Stanton Street, East 3rd Street, West 4th Street, Avenue C, 11th Street, 13th Street, 14th Street, East 17th Street, East 18th Street, Waverly Place, West 13th 230
Street, Lexington Avenue, 42nd Street, 116th Street, Columbus Avenue, 106th Street, 108th Street, 109th Street, Manhattan Avenue, 125th Street, 130th Street, 145th Street, East 35th Street, East 36th Street, and on other streets, avenues and other public places in said borough of Manhattan.

The lines held and operated by said Metropolitan Street Railway Company by lease, operating agreement or other arrangement or controlled by stock ownership were the lines of street railway of the Broadway and Seventh Avenue Railroad Company, the 42nd Street and Grand Street Ferry 231
Railroad Company, the Central Crosstown Railroad Company, the Christopher and Tenth Street Railroad Company, the Eighth Avenue Railroad Company, the Twenty-Third Street Railway Company, the Sixth Avenue Railroad Company, the Ninth Avenue Railroad Company, the New York and Harlem Railroad Company, the Thirty-Fourth Street Crosstown Railroad Company and the Fort George and Eleventh Avenue Railroad Company, the lines of which companies are severally and respectively located on the following streets, avenue

and other public places, or parts thereof, among others, in the said borough of Manhattan, to wit: West Broadway, Church Street, Washington Street, Greenwich Street, South Fifth Avenue, Wooster Street, Greene Street, Broome Street, Sullivan Street, Thompson Street, Park Place, Park Row, Centre Street, Grand Street, Bowery, 1st Street, 2nd Street, Broadway, 4th Street, 3rd Street, 8th Street, 9th Street, 10th Street, Clinton Place, Astor Place, Greenwich Avenue, Canal Street, Worth Street, 14th Street, Marginal
233 Street, 22nd Street, 23rd Street, 28th Street, 29th Street, First Avenue, Irving Place, Fourth Avenue, 32nd Street, 33rd Street, Lexington Avenue, 34th Street, 42nd Street, Vanderbilt Avenue, 44th Street, Avenue A, Tenth Avenue, Houston Street, Cannon Street, Goerck Street, Macdougal Street, University Place, Church Street, Eleventh Avenue, Bleecker Street, Crosby Street, Howard Street, Elm Street, Reade Street, Beekman Street, South Street, Fulton Street, William Street, Ann Street, Leonard Street, 12th Street, New Bowery, Peck Slip, Water Street, Pearl Street, Chambers Street, Washington Street, Gansevoort Street, Columbus Avenue, Central Park Transverse Road
234 No. 3 leading through Central Park substantially from 84th Street on the East side thereof to 86th Street on the West side thereof, 86th Street, Madison Avenue, Varick Street, Carmine Street, Sixth Avenue, Barclay Street, Park Place, Seventh Avenue, 50th Street, 51st Street, 53rd Street, Hudson Street, Eighth Avenue, Columbus Circle, Central Park West, Macomb's Lane, Lenox Avenue, 145th Street, Ninth Avenue, Amsterdam Avenue, 125th Street, 130th Street, Old Kingsbridge Road (now Broadway), and on other streets, avenues

and other public places in said Borough of Manhattan.

And also all lines of street railway, real estate, powerhouses, car barns, cars, equipment, motors, appliances, appurtenances, machinery, engines, boilers, materials, supplies and other property of whatsoever nature or wheresoever situate which were heretofore owned, held, operated or controlled by said Metropolitan Street Railway Company, or its receivers, and any and all right, title and interest of said Company in and to every part thereof, each and every such properties being 236
described in or covered by descriptions contained and set forth in the judgments and decrees and in the supplementary and modifying decrees hereinbefore refererd to, reference to which several decrees, on file in the office of the Clerk of the above-mentioned Court, being hereby had and made with the same force and effect as if the said several descriptions were herein set forth at length.

And also all franchises, grants, consents, easements, rights, bonds, notes, claims, demands, shares of stock, leasehold interests, leases, operating agreements or other arrangements, trackage 237
rights and privileges, all of whatsoever nature or description, which were heretofore owned, held, operated or controlled by said Metropolitan Street Railway Company, or its receivers, and any and all right, title and interest of said Company in and to every part thereof, each and every such properties, real or personal, tangible or intangible, being described in or covered by the descriptions contained and set forth in the judgments and decrees and in the supplementary and modifying decree hereinbefore referred to, reference to

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which several decrees, on file in the office of the Clerk of the above-mentioned Court, being hereby had and made with the same force and effect as if the said several descriptions were herein set forth at length.

IN WITNESS WHEREOF, we, the undersigned, being the Purchasers and their Associates, as aforesaid, have made this certificate in duplicate and have hereunto subscribed our names this 29th day of December, 1911.

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GUY E. TRIPP. [L. S.]
ALEXANDER J. HEMPHILL, [L. S.]
EDWIN S. MARSTON. [L. S.]
CHARLES F. MATHEWSON. [L. S.]
BENJAMIN S. HARMON. [L. S.]
JOSEPH P. COTTON, JR. [L. S.]
J. FREDERICK EAGLE. [L. S.]
CHAS. RICHTER. [L. S.]
JAMES A. POTTER. [L. S.]
RUDOLPH G. LAMY. [L. S.]
ALBERT W. HEMPHILL. [L. S.]
EDWARD J. PATTERSON. [L. S.]
HARRY A. JACOT. [L. S.]

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D. JOSEPH PALMER. [L. S.]
ALBERT J. KENNY. [L. S.]
HENRY R. WOHLERS. [L. S.]
MATTHEW T. MORRAY, JR. [L. S.]
KENNETH K. WARD. [L. S.]

STATE OF NEW YORK, }
City and County of New York, } ss.:

On this 29th day of December, A. D. 1911, personally came and appeared before me Guy E. Tripp, Alexander J. Hemphill, Edwin S. Marston, Charles F. Mathewson, Benjamin S. Harmon, Joseph P. Cotton, Jr., J. Frederick Eagle, Charles Richter, James A. Potter, Rudoplh G. Lamy, Albert W. Hemphill, Edward J. Patterson, Harry A. Jacot, D. Joseph Palmer, Albert J. Kenney, Henry R. Wohlers, Matthew T. Murray, Jr., and 242
Kenneth K. Ward, to me known and known to me to be the individuals described in and who executed the foregoing Certificate of Incorporation of New York Railways Company, and severally acknowledged to me that they had executed the same for the purposes therein mentioned.

THOMAS ROBINSON,
[NOTARIAL SEAL.] Notary Public, (#152),

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Plaintiff's Exhibit 2.

THE METROPOLITAN STREET RAILWAY COMPANY REORGANIZATION.

AGREEMENT OF SALE TO NEW COMPANY
By Purchasers under Foreclosure Decrees.

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245 Dated December 30, 1911.

AN AGREEMENT, made this 30th day of December, in the year 1911, between GUY E. TRIPP, ALEXANDER J. HEMPHILL and EDWIN S. MARSTON, as joint tenants (hereinafter called the Purchasers), parties of the first part; GUY E. TRIPP, EDWARD H. LADD, JR., OTTO H. KAHN, WILLIAM P. DIXON, ALEXANDER J. HEMPHILL and EDWIN S MARSTON (hereinafter called the Joint Committee), parties of the second part; and NEW YORK
246 RAILWAYS COMPANY, a corporation organized and existing under and pursuant to sections 9 and 10 of the Stock Corporation Law of the State of New York (hereinafter called the Company), party of the third part:

WHEREAS, under and by virtue of a certain Bondholders' Agreement dated March 5, 1908, Alexander J. Hemphill, Donald Mackay, Edward H. Ladd, Jr., William P. Dixon and Henry Evans (hereinafter called the Five Per Cent. Committee), were constituted a committee of holders of

the General Mortgage and Collateral Trust Five Per Cent. Gold Bonds of the Metropolitan Street Railway Company (hereinafter called the Metropolitan Company), issued under and secured by its mortgage or deed of trust dated February 1, 1897; and

WHEREAS, the holders of $11,817,000 face value of said General Mortgage and Collateral Trust Five Per Cent. Gold Bonds (hereinafter called the Five Per Cent. Bonds) of the Metropolitan Company have become parties to said Bondholders' 248
Agreement in the manner therein provided and have deposited their bonds with the Guaranty Trust Company of New York, the Depositary of said Five Per cent. Committee under said Bondholders' Agreement, in exchange for certificates of deposit issued by said Trust Company pursuant thereto, and such bonds are now held by the said Depositary; and

WHEREAS, under and by virtue of a certain Bondholders' Agreement dated November 25, 1907, Edwin S. Marston, Edwin M. Bulkley, John W. Castles, Dumont Clarke, Robert Y. Hebden and 249
Otto H. Kahn were constituted a Committee of holders of the Four Per Cent. Refunding One Hundred Year Gold Mortgage Bonds of the Metropolitan Company issued under and secured by its mortgage, dated March 21, 1902, under which The Farmers' Loan and Trust Company is now the successor Trustee; and the said John W. Castles and Dumont Clarke having each departed this life and Guy E. Tripp having been elected a member of the said Committee, the same now consists of Edwin S. Marston, Edwin M. Bulkley, Robert Y.

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Hebden, Otto H. Kahn and Guy E. Tripp (hereinafter called the Fourt Per Cent. Committee); and

WHEREAS, the holders of $16,401,000 of said Four Per Cent. Refunding One Hundred Year Gold Mortgage Bonds of the Metropolitan Company (hereinafter called the Four Per Cent. Bonds) having become parties to said Bondholders' Agreement in the manner therein provided and have deposited their bonds with The Frmers' Loan and Trust Company, the depositary of
251 said Four Per Cent. Committee under said Bondholders' Agreement, in exchange for Certificates of Deposit issued by said Trust Company pursuant thereto, and such bonds are now held by said Depositary; and

WHEREAS, by appropriate action and resolution of the said Five Per Cent. Committee and of the said Four Per Cent. Committee, a committee composed of members respectively of the said Five Per Cent. Committee and of the said Four Per Cent. Committee, to wit: Guy E. Tripp, Edward H. Ladd, Jr., Otto H. Kahn and William P. Dixon, and Alexander J. Hemphill, Chairman of said
252 Five Per Cent. Committee *ex officio*, and Edwin S. Marston, Chairman of said Four Per Cent. Committee, *ex officio*, was created and constituted under the name and style of Joint Committee on Reorganization of the Metropolitan Company, which committee is hereinafter called the Joint Committee; and

WHEREAS, the said Joint Committee has formulated a Plan and Agreement for the Reorganization of the Metropolitan Company, dated Novem-

ber 29, 1911, a copy whereof marked "Schedule A" is hereto attached and to which reference is made for its terms and provisions, which Plan and Agreement were approved and adopted as the Plan and Agreement of the Five Per cent. Committee, pursuant to said Five Per Cent. Bondholders' Agreement, and approved and adopted as the Plan and Agreement of the Four Per Cent. Committee, pursuant to said Four Per Cent. Bondholders' Agreement, and said Plan and Agreement of November 29, 1911, has therefore been adopted and approved and constitutes 254
the Plan and Agreement for the Reorganization of the Metropolitan Company as aforesaid by authority and by the action of said Five Per Cent. Committee, said Four Per Cent. Committee and said Joint Committee, and a copy of the same has been duly filed with the Guaranty Trust Company of New York, the Depositary of the Five Per Cent. Committee under the Five Per Cent. Bondholders' Agreement, and also with The Farmers' Loan and Trust Company, the Depositary of the Four Per Cent. Committee under the Four Per Cent. Bondholders' Agreement, and notice of the preparation, approval, adoption and filing of said 255
Plan and Agreement of November 29, 1911, as aforesaid, has been published as provided in the said Five Per Cent. Bondholders' Agreement, and also as provided in said Four Per Cent. Bondholders' Agreement; and

WHEREAS, by an Agreement of Readjustment, dated December 27, 1911, by and between the Five Per Cent. Committee, the Four Per Cent. Committee and the Joint Committee for and to effectuate the readjustment, in accordance with said Plan

and Agreement of November 29, 1911, of the respective interests of such creditors, mortgagees and stockholders of Metropolitan Company and holders of claims for injuries or damages sustained, in and about the operation, maintenance or construction of any or all the property formerly owned or leased to said Merolitan Company, as have deposited their stock or evidences of debts or claims in the manner provided in said Plan and Agreement of November 29, 1911, as therein provided, and for the repre-
257 sentation of such interests in the bonds and stock of a new corporation to be formed under and pursuant to the laws of the State of New York upon the acquisition by the purchasers of said property and franchises at the foreclosure sales hereinafter mentioned, the Joint Committee pursuant to the powers vested in it by said Plan and Agreement duly appointed Guy E. Tripp, Alexander J. Hemphill and Edwin S. Marston and the survivor or survivors of them (the parties hereto of the first part) to act as a Purchasing Committee to bid for and to purchase at such foreclosure sales the property and franchises of the Metropolitan Company
258 and to receive deeds conveying the same to said Purchasers as joint tenants and not as tenants in common; and

WHEREAS, the outstanding capital stock of said Metropolitan Company amounts to $52,000,000 par value, consisting of 520,000 shares of the par value of $100 each, which was duly and lawfully issued for the lawful purposes of such corporation prior to the year 1900 and is now outstanding; and

WHEREAS, pursuant to the decree of foreclosure and sale, duly made by the Circuit Court of the United States for the Southern District of New York, and entered and filed in the office of the Clerk of said Court on or about the 6th day of April, 1910, in a certain cause in equity therein pending wherein Guaranty Trust Company of New York was complainant and said Metropolitan Company and others were defendants (which decree duly found and adjudged that all of said Five Per Cent. Bonds, to wit, to the principal amount of $12,500,000, were duly issued and outstanding, 260
and that for principal and interest to March 18, 1909, there was due on account thereof the sum of $13,589,270.83 in the aggregate), and also pursuant to a decree of foreclosure and sale duly made by the Circuit Court of the United States for the Southern District of New York, and entered and filed in the office of the Clerk of said Court on or about the 31st day of May, 1910, and to the decree supplemental thereto, dated November 2nd, 1910, as modified by a decree of said Court entered and filed in the office of the Clerk of said Court on and bearing the date the 26th day of December, 1911, all in a certain other 261
cause then pending in said Court, in which The Farmers Loan and Trust Company, successors of Morton Trust Company, was complainant, and said Metropolitan Company and others were defendants (which decree duly found and adjudged that all said Refunding Mortgage Bonds, to wit, to the principal amount of $16,604,000, were duly issued and outstanding, and that for principal and interest to May 31, 1910, there was due on account thereof the sum of $18,931,260.90, in the aggregate), all of the property and franchises of said

Metropolitan Company, and all the property subject to the lien of said Refunding Mortgage, including all the property subject to the lien of said General and Collateral Trust Mortgage, and all the property acquired by the Receivers appointed by said Court in said causes, were sold to said Purchasers, who were as aforesaid duly appointed by said Agreement of Readjustment, dated December 27, 1911, to purchase the same, and such sales were duly confirmed by decrees of said Court made in said causes respectively and dated December
263 29th, 1911, and thereafter said property and franchises were duly conveyed to the Purchaers, as joint tenants, but not as tenants in common, by certain deeds, dated December 29th, 1911, made, executed and acknowledged by William L. Turner, as Special Master, appointed for the purpose by said Court in said causes, and also made, executed and acknowledged by Adrian H. Joline and Douglas Robinson, as Receivers appointed in said causes of the property of said Metropolitan Company mortgaged by and pledged under said General and Collateral Trust Mortgage and said Refunding Mortgage; and

264 WHEREAS, the Five Per Cent. Committee, the Four Per Cent. Committee, the Joint Committee and the Purchasers have expended large sums of money and have incurred important obligations in connection with said Plan and Agreement of Reorganization and with the purchases thereunder of the said property and franchises of the Metropolitan Company and with the organization of the Company; and

WHEREAS, the Company, the party hereto of the third part, has been and is duly organized under and pursuant to Sections 9 and 10 of the Stock Corporation Law by said Purchasers and their associates for the purpose of carrying out and duly performing the Plan and Agreement of Reorganization, and to take and possess the property and franchises of the Metropolitan Company so sold and acquired by the Purchasers, as will more fully and at large appear by reference to the Certificate of Incorporation of the Company, dated December 29th, 1911, and duly filed, as required 266
by law, in the office of the Secretary of State of the State of New York, on the 29th day of December, 1911, and in the office of the Clerk of the County of New York on the 30th day of December, 1911; and

WHEREAS, the Company desires to purchase and acquire from said Purchasers, and to take, possess and hold all and singular the property and franchises so sold to and acquired by the Purchasers under said decrees and mentioned and described in said deeds dated December 29th, 1911, and in consideration thereof and to effectuate the read- 267
justment, in accordance with said Plan and Agreement of Reorganization, of the respective interests of the creditors, mortgagees and stockholders of the Metropolitan Company and holders of claims for injuries or damages sustained in and about the operation, maintenance or construction of any or all the property formerly owned or leased to said Metropolitan Company as have deposited their bonds, stock or evidences of debt or claims in the manner provided in said Plan and Agreement of

November 29, 1911, and for the representation of such interests in the bonds and stock of the Company, to issue as provided in its said Certificate of Incorporation and in conformity with said Plan and Agreement of Reorganization and said Agreement of Readjustment, the securities hereinafter mentioned.

NOW, THEREFORE, in consideration of the premises and in pursuance of said Plan and Agreement of Reorganization and said Agreement of Readjustment, and for the purpose of carrying the same
269 into effect, and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto have mutually covenanted and agreed, and do hereby mutually covenant and agree as follows:

ARTICLE I.—The said Purchasers, parties hereto of the first part, as joint tenants, and not as tenants in common, as aforesaid, with the consent and approval of the Joint Committee, parties hereto of the second part, evidenced by their becoming parties to this agreement, in consideration of the purchase price hereinafter mentioned and the per-
270 formance by the Company of the covenants and agreements hereinafter contained and on its part to be performed, and do hereby sell, assign and transfer and agree to convey to the Company, all their and each of their estate, right, title and interest in and to the property and franchises sold at the sales held under and in accordance with said decrees and conveyed to the Purchasers by said deeds dated December 29th, 1911, but subject to all liens, incumbrances, conditions, provisions, terms, reservations and limitations contained in

said decrees of foreclosure and sale and in said decrees of confirmation, and in said deeds dated December 29th, 1911, except so far as said provisions, terms, conditions and limitations may have been complied with by the Purchasers at the date of these presents, and except any leases, traffic or trackage or operating agreements or other executory contracts which the Purchasers, pursuant to the terms of said decrees and of said sales may have elected not to adopt.

ARTICLE II.—The Company, being duly author- 272
ized by its Certificate of Incorporation so to do, hereby purchases said property and franchises, and covenants and agrees that as soon as may be, and at least within sixty days from the date hereof, will issue and cause to be delivered to the Joint Committee or upon its order in writing, in consideration of and payment for said property and franchises, and in readjustment of th respective interests in the property and franchises purchased of the aforesaid creditors, mortgagees and stockholders of said Metropolitan Company, and holders of claims for injuries and damages sustained, in and about the operation, maintenance, 273
or construction of any or all the property formerly owned by or leased to said corporation, and in pursuance of said Plan and Agreement of Reorganization, the following mortgage bonds and full paid non-assessable shares of the capital stock of the Company in the aggregate amount of $66,201,500 par value, that is to say:

(a) $16,768,100 face value of its Thirty-Year First Real Estate and Refunding Mortgage Four Per Cent. Gold Bonds (hereinafter called New

Four Per Cent. Bonds), hereinafter described, bearing interest from January 1st, 1912.

Any additional amount of said New Four Per Cent. Bonds which the Joint Committee in its discretion may deem necessary to raise any additional moneys which may be required to comply with the terms of said foreclosure decrees, to carry out the reorganization, or to carry out the purposes or discharge the liabilities of the reorganization and to pay its expenses as in the Plan provided, but not exceeding the face value of $2,000,000 in the
275 aggregate; and

$31,933,400 face value of its Thirty-Year Adjustment Mortgage Five Per Cent. Income Gold Bonds (hereinafter called Adjustment Bonds) hereinafter described, bearing interest from January 1, 1912; and

$17,500,00 par value of the full paid and non-assessable shares of its capital stock or certificates representative thereof, which shall be the total authorized amount thereof.

The Company agrees to authorize a series of bonds to be known as its Thirty-Year First Real
276 Estate and Refunding Mortgage Four Per Cent. Gold Bonds, the total authorized issue of which may or may not be specifically limited by the terms of said mortgage. Said New Four Per Cent. Bonds shall all be issued under and in pursuance of and shall all be equally secured by a mortgage or deed of trust, which shall be known as the First Real Estate and Refunding Mortgage of the Company, and shall be executed by it to the Guaranty Trust Company of New York, as Trustee. Such mortgage or deed of trust shall be prior

and superior in lien to the Adjustment Mortgage hereinafter mentioned, but subject, as to the respective properties and franchises described in the existing mortgages or deeds of trust securing underlying bonds recited and described in said new mortgage, to the liens of said existing mortgages and deeds of trust in so far, but only in so far, as the same by their terms attach thereto.

The New Four Per Cent. Bonds not required to be delivered to the Joint Committee, or on its order as aforesaid, shall be reserved to be issued from time to time only under the conditions, limitations and restrictions and for the purposes stated in said new mortgage and subject to the consent of the Public Service Commission, or other lawful authority if and so far as such approval be then necessary and thereafter subject to the consent provided in said new mortgage. 278

The Company shall also authorize a series of bonds to be known as its Thirty-Year Adjustment Mortgage Five Per Cent. Income Gold Bonds (hereinafter called the Adjustment Bonds), the total authorized issue of which shall be limited so that there shall not at any time be outstanding bonds of said series for an aggregate principal sum exceeding $33,000,000. Said Adjustment Bonds shall all be issued under and in pursuance of and shall all be equally secured by a mortgage or deed of trust which shall be known as the Adjustment Mortgage of the Company, and shall be executed by it to The Farmers' Loan and Trust Company, as Trustee, and shall cover all of the property at any time subject to the lien of the Real Estate and Refunding Mortgage. Said Adjustment Mortgage shall be subject to the prior and superior lien of the said Real Estate and Refund- 279

ing Mortgage and also, as to the respective properties and franchises described in the existing mortgages or deeds of trust therein referred to securing underlying bonds to the lien of said mortgages and deeds of trust in so far, but only in so far, as the same by their terms attach thereto.

Adjustment Bonds not required to be delivered to the Joint Committee, as aforesaid, shall be reserved to be issued for such purposes as may be prescribed and provided in the said Adjustment Mortgage, and subject to the consent of the Pub-
281 lic Service Commission, or other lawful authority, if and so far as such consent may be then necessary, and thereafter subject to the consent provided in said Adjustment Mortgage.

Until full interest at the rate of five per cent. per annum, shall have been paid upon said Adjustment Bonds in and during each calendar year for three successive years, and again thereafter for and during a like period whenever a failure to pay interest aggregating $50 for each $1,000 of said bonds during any calendar year shall occur, the holders of said Adjustment Bonds shall have the right and power of voting set forth in the Cer-
282 tificate of Incorporation of the Company and in said Adjustment Mortgage and said rights shall be exercised and established in the manner in said Certificate of Incorporation and in said Adjustment Mortgage provided.

The said Real Estate and Refunding Mortgage and the said Adjustment Mortgage and the bonds such form as the Joint Committee may prescribe or approve, and as and to the extent that the said matters are there stated, said respective mortgages shall embody the provisions set forth in Article

IV of the above-mentioned Agreement of Readjustment, dated December 27th, 1911, of which a copy marked "Schedule B" is hereto attached and to which reference is made for its terms and provisions.

ARTICLE III.—The Purchasers hereby reserve, and the Company hereby creates and grants to the Purchasers, or their assigns, upon and against the property and franchises described in said several deeds dated December 29th, 1911, and hereinbefore sold, assigned and transferred, and agreed to be 284
conveyed, and any conveyance or delivery of possession of such property which may in the meantime be made by the Purchasers to the Company, shall be subject to such lien or charge, whether or not it be expressly so provided in said conveyance, a purchase money lien or charge, to secure the payment by the Company to the Purchasers, or their assigns, of the sum of $66,201,500 in cash on demand and in any event on the 29th day of February, 1912, or on such later date as the Joint Committee in its discretion may fix, which payment the Company hereby agrees and covenants to make, and which sum is hereby agreed to be the 285
value of the property and franchises hereby agreed to be conveyed, over and above and subject to the obligations secured by liens and to the obligations imposed by said decrees thereon and hereby assumed by the Company, unless the Company, before said demand or the date last aforesaid, or such later date as may be fixed by the Joint Committee, shall have issued or delivered or caused to be delivered to the Joint Committee, or in accordance with its written order, as aforesaid, the

bonds, stock and any other securities described bonds, stock and any other securities described in Article II hereof, or temporary certificates representing said bonds, stocks and any other securities, and unless said securities when delivered shall have been duly authorized and consented to by order of the Public Service Commission for the First District to the extent that such authorization and consent are now required by law. If before the date herein fixed, or any extension thereof hereby authorized,
287 the Company shall have delivered to or upon the written order of the Joint Committee the said bonds, stocks and any other securities so authorized and consented to, the said purchase money lien or charge shall without further act be deemed to have been canceled and the obligation of the Company to pay the said amount in cash shall be deemed to have been waived, released and discharged. If, on the other hand, the Company, before the making of demand for payment and in any event before said February 29, 1912, or such later date, if any, as the Joint Committee in its discretion may allow for that purpose, shall not
288 have delivered said securities so authorized and consented to, and shall not have paid said amount in cash, then and thereupon the Purchasers, or their assigns, may forthwith and without notice enter upon and take possession of said property and franchises and may take such proceedings at law or in equity to enforce the payment of said obligation and to enforce and foreclose the said purchase money lien or charge as they may deem proper and effectual, and, as matter of right, shall be entitled to apply to a Court of competent juris-

diction, or to any Judge of said Court, for the appointment of a Receiver of the said property and franchises, and the Company shall in such case irrevocably consent to the appointment of such a Receiver.

All proceeds realized by the Purchasers or by the Joint Committee, or their assigns, as a result of the enforcement of such obligation whether in cash or by a retaking of the property sold shall be held, applied and disposed of as the Joint Committee shall determine to be proper and in accordance with the provisions of the said Plan and 290
Agreement of November 29, 1911, or any modification thereof or supplement thereto.

No remedy herein conferred upon the Purchasers, or their assigns, is intended to be exclusive of any other remedy or remedies; but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

ARTICLE IV.—The Purchasers and the Joint Committee hereby covenant and agree (in their respective capacities and not individually) that 291
the said bonds, stock and any other securities so to be issued and delivered by the Company, shall if and when received by the Joint Committee, be used, disposed of and distributed by the Joint Committee as contemplated by said Plan and Agreement of November 29, 1911, or any action taken or agreement made pursuant thereto.

ARTICLE V.—The Joint Committee hereby agrees to pay over to the Company on January 2, 1912, a working capital of $500,000.

Upon the final accounting provided for in said Plan and Agreement of November 29, 1911, the Joint Committee shall assign and deliver to the Company, or set apart and hold or deposit in trust to secure the application thereof to any of the purposes of said Plan and Agreement or for the uses of the Company, in such manner as the Joint Committee may deem best, any balance of cash received by the Joint Committee under said Plan and Agreement of November 29, 1911, from assessments therein provided for or other source,
293 and any Five Per Cent. Bonds and Four Per Cent. Bonds, or other bonds, remaining in its hands or in those of the Five Per Cent. Committee or Four Per Cent. Committee and of any stocks, notes, claims, or other assets received in exchange for securities allotted under the said Plan and Agreement, together with all rights appurtenant thereto (except the right to participate in cash held by the Trustees under the mortgages respectively securing the said bonds) or acquired by the Joint Committee under said Plan and Agreement, after (*a*) distributing or setting apart the stocks and bonds of the Company deliverable to
294 depositors of stocks, bonds and claims of or against the Metropolitan Company or to others as provided in said Plan and Agreement of November 29, 1911, and (*b*) delivering all stocks and bonds of the Company sold or disposed of by the Joint Committee to any syndicate or bankers or others, (*c*) paying or fully providing for all sums payable by the Purchasers as the purchase price of the property acquired at said foreclosure sales or otherwise under the decrees or orders of said Circuit Court of the United States or as the pur-

chase price of any other property acquired under said Plan and Agreement, and (*d*) paying or fully providing for all expenses, obligations and liabilities whatsoever of the reorganization and of the Joint Committee, the Five Per Cent. Committee and the Four Per Cent. Committee, including the compensation of any syndicate or bankers and the compensation and expenses of said three Committees and of the Purchasers and of the depositaries and of the several and respective counsel of said Committees, and after setting aside any sum which the Joint Committee may deem reasonably 296
necessary to indemnify themselves, including said Purchasers, against any and all liabilities, demands and claims then existing or thereafter arising by reason of any acts done or suffered by them or any of them under said Plan and Agreement of November 29, 1911, said Five Per Cent. Agreement or said Four Per Cent. Agreement or this or any other agreement to which any of said Committees or the members thereof may be or become a party or parties.

ARTICLE VI.—The Company hereby agrees and covenants to assume and pay all obligations and 297
liabilities of the Purchasers, of the Joint Committee, of the Five Per Cent. Committee and of the Four Per Cent. Committee, whether incurred in connection with the sale and purchase of said property and franchises or under the said Five Per Cent. Agreement, said Four Per Cent. Agreement, or under said Plan and Agreement of November 29, 1911, except so far as such obligations and liabilities shall be paid, satisfied or discharged out of the bonds and stock to be issued and delive-

ered by the Company in accordance with the provisions of this agreement, or out of the moneys received by the Joint Committee from depositing stockholders under said Plan and Agreement, or realized by the sale or other disposition of any stock or bonds or otherwise ;and the Company further agrees to indemnify and forever hold harmless the Purchasers, the Joint Committee, the Five Per Cent. Committee and the Four Per Cent. Committee and each of the members of said committees and their respective heirs, executors and
209 administrators from and against every act, claim, demand, charge, liability, cost and expense of every name and nature in any manner arising out of, or connected with the reorganization provided for in said Plan and Agreement of November 29, 1911, or this or any other agreement to which any of said Committees or the members thereof may be or become a party or parties.

ARTICLE VII.—Nothing herein contained shall be held to impair, waive or modify the powers and authority of the Joint Committee, the Five Per Cent. Committee and the Four Per Cent. Committee under said Plan and Agreement of November
300 29, 1911, or under said several Bondholders' Agreements.

In case the Joint Committee, in pursuance of said Plan and Agreement, shall require a transfer of the franchises and property of The Central Crosstown Railroad Company of New York, such transfer may be arranged in escrow in such manner as the Joint Committee may prescribe, with power to the Joint Committee in the event of abandonment of the Plan or termination thereof, as in said Agreement of Reorganization stated, to

cancel such transfer on payment to the Joint Committee of such sums as they may fix on account of expenses incurred. Upon the transfer of the property and franchise of The Central Crosstown Railroad Company of New York to the Company the same shall be subjected to the lien of the aforesaid Real Estate and Refunding Mortgage and of the Adjustment Mortgage. In the event that the Joint Committee shall consent to the acceptance of assignments of not less than 95% of the collateral notes of said The Central Crosstown Company of New York in lieu of the property of 302
said Company as provided and permitted by the Plan and Agreement of Reorganization, the said collateral notes or, if and when permitted by law, the bonds pledged to secure said collateral notes, shall be pledged under the Real Estate and Refunding Mortgage and under the Adjustment Mortgage by supplemental instruments or otherwise as the Joint Committee may prescribe or approve.

ARTICLE VIII.—The Company agrees to make and perform any such further agreement as the Purchasers or Joint Committee may reasonably 303
require, and to adopt and agree to perform any and all agreements which may have been made or which may be made by the Purchasers or Joint Committee under and in order to effectuate said Plan and Agreement of November 29, 1911, and any agreement which the Purchasers or Joint Committee shall require with respect to the issue of the bonds, stock and other securities hereinbeforeprovided for, and with respect to the purchase or acquisition of the property or securities con-

templated under said Plan and by the said Readjustment Agreement and by this agreement.

ARTICLE IX.—The Company, at the request of the Purchasers, and in accordance with and by virtue of the authority vested in it by said decrees, does hereby agree that it will, as provided in said decrees, and does hereby irrevocably elect to adopt and continue the following leases:

Lease made by the Broadway and Seventh
305 Avenue Railroad Company to the Houston, West Street and Pavonia Ferry Railroad Company, dated May 13, 1890, and filed and recorded in the office of the Secretary of State of the State of New York on the 14th day of June, 1890;

Lease made by the Eighth Avenue Railroad Company to the Metropolitan Street Railway Company, dated November 23, 1895, and filed and recorded in the office of the Secretary of State of New York on December 28, 1895 (excepting therefrom the premises known as No. 315 West 50th Street);

306 Lease made by the Sixth Avenue Railroad Company to the Houston, West Street and Pavonia Ferry Railroad Company, dated February 1, 1892, and filed and recorded in the office of the Secretary of State of New York on the 12th day of April, 1892 (excepting therefrom those certain lots of land lying on the easterly side of Lenov Avenue between 140th and 141st streets);

Lease made by the Ninth Avenue Railroad Company to the Houston, West Street and Pavonia

Ferry Railroad Company, dated March 12, 1892, and filed and recorded in the office of the Secretary of State of New York on the 20th day of April, 1892 (excepting therefrom those two certain lots of land on the westerly side of Amsterdam Avenue between 125th and 126th streets);

Lease made by the New York and Harlem Railroad Company to the Metropolitan Street Railway Company, dated June 11, 1896, and filed and recorded in the office of the Secretary of State of New York on the 16th day of July, 1896, and all 308
agreements supplemental thereto;

Lease made beween Forty-second Street and Grand Street Ferry Railroad Company, the Metropolitan Crosstown Railway Company and the Houston, West Street and Pavonia Ferry Railroad Company, dated April 6, 1893, and filed and recorded in the office of the Secretary of State of New York on the 13th day of May, 1893;

Lease made by the Twenty-third Street Railway Company to the Houston, West Street and Pavonia Ferry Railroad Company, dated April 25, 309
1893, and filed and recorded in the office of the Secretary of State of New York on the 7th day of June, 1893, including the right, title and interest passed by said lease in and to the properties described in the lease made by the Bleecker Street and Fulton Ferry Railroad Company to the Twenty-third Street Railway Company, dated January 10, 1876;

Lease of all those certain lots of ground situate, lying and being in the Sixteenth Ward of the

Borough of Manhattan, distinguished upon a map of certain lands of Clement C. Moore, situate at Greenwich, in the City of New York, recorded in the office of the Register in and for the City and County of New York in Liber 634 of Conveyances, page 411, by the numbers 905 to 908 and 936 to 941, all inclusive, and bounded together as follows, viz.: Southeastwardly in front by the Eleventh Avenue, southwestwardly by the half distance line between 23rd Street and 24th Street, northwestwardly by lots numbered on the said
311 map 935 and northwestwardly by the said 24th Street;

The term "lease" as used in this agreement, is intended to describe the instrument under which the Company shall receive possession of the various lines of street railway and other properties which are in this Article IX referred to, whether such instrument be in form and in legal construction a lease or operating agreement or other arrangement. The use of the term "lease" in referring to such instrument shall not in any manner be construed to be a declaration or recognition by the Company, or any party hereto, that such in-
312 strument is in fact and in law a lease or that any of the properties above referred to, are in fact and in law held by the Company under a lease, the Company expressly reserving to itself the right at all times and places to assert that such instrument is not in legal effect a lease and that such properties are not held under an instrument which is in legal effect a lease; and any provision or recital of the aforesaid decrees of foreclosure, Plan and Agreement for Reorganization, Agreement for Readjustment, Deeds to the Purchasers, or this

agreement, deeds to the Company, or in any decree, order or opinion expressed by the Court or recital or statement contained in any instrument concerning the said properties, by whomsoever and whensoever made, shall be without effect upon or in anywise impair the right and privilege of the Company in respect of the true definition and construction of any such instrument or arrangement.

ARTICLE X.—This agreement is made, and any agreement modifying or supplementing this agree- 314
ment shall be deemed to have been made pursuant to said Plan and Agreement of November 29, 1911, and to further and promote the consummation thereof, and shall, any provision hereof to the contrary notwithstanding, be subject to and construed in harmony with the provisions of said Plan and Agreement and of Sections 9 and 10 of the Stock Corporation Law of the State of New York. No personal liability shall be incurred by or exist or be enforced against any Purchaser or any member of the Joint Committee by reason hereof or of any act done or step taken pursuant hereto, and all the immunities and exemptions of said persons 315
under said Plan and aAgreement shall exist in favor of the parties hereto of the first and second parts.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and the party hereto of the third part and of the first and second parts, by order of its Board of Directors, has caused these presents to be signed by its President, and its corporate seal to be hereunto affixed, and at-

tested by its Secretary, the day and year first above written in triplicate.

GUY E. TRIPP, [L. S.]
ALEXANDER J. HEMPHILL, [L. S.]
EDWIN S. MARSTON, [L. S.]
Purchasers.

GUY E. TRIPP, [L. S.]
EDW. H. LADD, JR., [L. S.]
OTTO H. KAHN, [L. S.]
WM. P. DIXON, [L. S.]
317 ALEXANDER J. HEMPHILL, [L. S.]
EDWIN S. MARSTON, [L. S.]
Joint Committee.

NEW YORK RAILWAYS COMPANY,
[SEAL] By CHARLES F. MATHEWSON,
Vice-President.

Attest:
JOSEPH P. COTTON, JR.,
Assistant Secretary.

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Plaintiff's Exhibit 3.

PLAN AND AGREEMENT FOR THE REORGANIZATION OF THE METROPOLITAN STREET RAILWAY COMPANY.

DATED NOVEMBER 29, 1911.

GUARANTY TRUST COMPANY OF NEW YORK,
Depositary.

320

THE FARMERS' LOAN AND TRUST COMPANY,
Depositary.

Alexander J. Hemphill,
Chairman,

Donald Mackay,
Edward H. Ladd, Jr.,
William P. Dixon,
Henry Evans,
Five Per Cent. Committee.

L. B. Franklin,
Secretary.

John C. Spooner,
Counsel.

Edwin S. Marston,
Chairman,

Edwin M. Bulkley,
Robert Y. Hebden,
Otto H. Kahn,
Guy E. Tripp,
Four Per Cent. Committee.

Frederick Geller,
Secretary.

Krauthoff, Harmon & Mathewson,
Frederick Geller,
Counsel.

321

Guy E. Tripp, *Chairman,*
William P. Dixon,
Otto H. Kahn,
Edward H. Ladd, Jr.,
Alexander J. Hemphill, *Ex Officio.*
Edwin S. Marston *Ex Officio.*
Joint Committee.

Alexander J. Hemphill,
Secretary.

L. C. Krauthoff,
J. P. Cotton, Jr.,
Counsel.

322 JOHN W. HAMER, et al. *vs.*

PLAN AND AGREEMENT FOR THE REORGANIZATION OF THE METROPOLITAN STREET RAILWAY COMPANY.

PREFATORY.

MEANING OF TERMS.

323 Except as otherwise expressly indicated, the following terms and phrases used in this Plan and in the Agreement annexed thereto shall be respectfully deemed and taken to mean and describe the matters and things hereinafter specified, to wit:

1. The Metropolitan Company: the Metropolitan Street Railway Company.

2. The Metropolitan System: collectively, the lines of street railway, and all equipment, real estate and other property held in connection
324 therewith, owned, leased or otherwise controlled by the Metropolitan Company and operated by the Receivers of said Company at the date of this Plan or at such other date as the Joint Committee may hereafter specify.

3. The 5% Bonds: the bonds issued under the General and Collateral Trust Mortgage, dated February 1, 1897, made by the Metropolitan Company to the Guaranty Trust Company of New York, as Trustee (including all unpaid coupons

and interest claims pertaining to said bonds), said mortgage being herein referred to as the General Mortgage.

4. The 4% Bonds: The bonds issued under the Refunding Mortgage, dated March 21, 1902, made by the Metropolitan Company to the Morton Trust Company, as Trustee, under which mortgage The Farmers' Loan and Trust Company is now the duly designated Successor Trustee—(including all unpaid coupons and interest claims pertaining to said bonds), said mortgage being herein referred 326
to as the Refunding Mortgage.

5. The 5% Committee: The Bondholders' Committee formed under an agreement made the 5th day of March, 1908, between such holders of the General Mortgage Bonds as have or may become parties thereto, parties of the first part, and Alexander J. Hemphill and others, thereinafter designated the Committee, parties of the second part.

6. The 4% Committee: The Bondholders' Committee, formed under an agreement made the 25th 327
day of November, 1907, between such holders of the Refunding Mortgage Bonds as have or may become parties thereto, parties of the first part, and Edwin S. Marston and others, and those who have been or may be associated with them, and their successors, thereinafter designated the Committee, parties of the second part.

7. The 5% Certificates: The certificates of the Guarantee Trust Company of New York evidencing the deposit of 5% Bonds under said Bond-

holders' Agreement of March 5, 1908, or in acceptance of this Plan.

8. The 4% Certificates: The certificates of The Farmers' Loan and Trust Company evidencing the deposit of 4% Bonds under said Bondholders' Agreement of November 25, 1907, or in acceptance of this Plan.

9. The Joint Committee: The Committee created by the 5% Committee and the 4% Committee to act as the Committee for the reorganization of the Metropolitan Company and the readjustment of the securities herein treated, as said Joint Committee may be constituted from time to time.

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10. The New York Company: The New York City Railway Company, formerly known as the Interurban Street Railway Company.

11. The Tort-Claimants: The persons holding claims for damages because of personal injuries and other torts caused or committed by the New York Company or by the Metropolitan Company, whose claims were, on or before March 2, 1910, filed before the Special Master thereunto designated by the Court and have been or hereafter may be adjudicated as valid, to the extent of the amount specified in such adjudications (without interest).

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12. The Court: The Circuit Court of the United States for the Southern District of New York.

13. The Receivership: The proceedings in the Court in which Messrs. Adrian H. Joline and Douglas Robinson have been appointed and are at the date hereof acting as Receivers of the Metropolitan Company.

14. The New Company: The corporation or corporations to be organized or utilized to effectuate the Plan.

15. The Plan means this plan and any modification thereof, amendment or supplement thereto, or substitute therefor, which may be promulgated by the Joint Committee; and includes, in each instance, the Agreement appended hereto and each and every modification thereof, or amendment or supplement thereto or substitute therefor, and as well as any other plan or agreement which may be promulgated or approved by the Joint Committee. 332

THE PLAN.

The Metropolitan Company owns and controls an extensive system of street railways in the City of New York, with equipment, power houses, car barns and other real estate, and other property pertaining to or adapted for use in the operation and maintenance thereof. There has been expended in the construction, reconstruction, extension, improvement, betterment and equipment of said system, as the Joint Committee is advised by expert engineers and accountants, a sum in excess of $120,000,000. 333

All said properties have been since about September 27, 1907, and are now the subject of the Receivership.

Decrees of foreclosure, respectively, of the General Mortgage and of the Refunding Mortgage have been entered by the Court, and the said properties subject thereto ordered to be sold under said decrees.

The Joint Committee desires to purchase said properties at the sales thereof, or to cause such purchase to be made in its behalf, in either event, subject to the terms of said respective decrees.

It is proposed that a new railroad corporation shall be formed under the provisions of Sections
335 9 and 10 of the Stock Corporation Law of New York, and to vest in it the ownership or control of the properties described in said decrees and constituting a part of or pertaining to said Metropolitan System as the same may be acquired by or on behalf of the Joint Committee at sales under said foreclosure decrees or otherwise, together with all the rights of the old securities acquired by the Joint Committee in exchange for new securities under the provisions of this Plan, subject to the right of the Joint Committee to deal with and dispose of the stock, bonds, claims, choses in action and other intangible rights ac-
336 quired by the purchaser in such manner as the said Committee may deem expedient in effectuating the purposes of the Plan and the matters therein provided for.

In accordance with the provision of the statutes of the State of New York in such cases made and provided, the Joint Committee does hereby formulate this Plan and the Agreement annexed thereto, for the reorganization of said Metropolitan Company and its properties and for and in anticipation of the readjustment of the respective interest

therein of the bondholders, creditors and stockholders who may become parties to the said Plan and Agreement, and for the representation of such interests in the bonds and stocks of the new corporation which the Joint Committee proposes to organize or to utilize for the consummation of such proposed purchase, to wit:

I.

OUTSTANDING SECURITIES OF SYSTEM. 338

1. Bonds, Debentures and Collateral Notes (Schedule A)*		57,285,000
2. Stocks (Schedule B)		67,900,000
		$125,185,000
Less those to be acquired under foreclosure sales (Schedule C):		
Bonds	3,700,000	
Stocks	5,792,000	
		9,492,000 339
Held by Public		$115,693,000

*In all tabulations on the subject, a claim for $2,204,929.92 against the Twenty-third Street Railway Company is excluded; the matter being in litigation and therefore not susceptible of accurate statement at the date hereof.

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SPECIAL ITEMS.

(All Subject to Conditions and Qualifications Hereinafter Specified.)

3. Improvement Notes made by the Metropolitan Company to the Metropolitan Securities Company, other than those in the possession of the Receiver of the New York Company or the Receivers of the Metropolitan
341 Company, hereinafter referred to as Special Item 3 (without interest)† 4,000,000

4. Allowances decreed by the Court in favor of the Tort-Claimants, the full amount of which is estimated to be 1,875,000

5. Estimate of Cash Requirements substantially* 7,300,000

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†There is a possibility of a claim that there is an additional amount
342 of $4,000,000 of said notes outstanding, for the treatment of which power reserved to the Joint Committee. See Article V., paragraph 6, *infra*.

*The minimum of the bids which the Court has authorized to be accepted at the foreclosure sales aggregates $12,000,000. It is estimated that not to exceed the above estimate will ultimately and in any event be required to be paid under a purchase made for the purposes of this Plan. Out of this fund and the very

6. Accrued and defaulted interest on the following bonds and notes held by the public and interest thereon (as of January 1, 1912):			
(*a*) On 5% bonds	$3,085,416.67		
(*b*) On 4% bonds	3,141,476.80		
(*c*) On Central Crosstown Notes	320,976.03		
(*d*) On Metropolitan Crosstown First Mortgage Bonds	123,525.00		344
Total		6,671,394.50	
Thus making a Grand Total of Public Holding and Special Items		$135,539,394.50	

substantial other funds in the hands of the Court which are believed to be available for that purpose, the outstading receivers' certificates (substantially $5,830,000), claims adjudged or which may be adjudged to be preferential, receivers' liabilities and obligations, costs, allowances and other sums ordered to be paid by the Court, will have to be met. Out of said estimated Cash Requirements and the funds and securities in and by the Plan provided and permitted to be used for that purpose, the charges and expenses of the Reorganization will be paid. 345

And the above stated estimated amount may be reduced as a result of adjustments, application of funds held by the Court, accruing surplus earnings, and other items.

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II.

SECURITIES TO REMAIN UNDISTURBED.

Bonds (Schedule D)	25,646,000
Stocks (Schedule D)	15,300,000
	$40,946,000
Less those to be acquired under foreclosure sales (Schedule C)	9,492,000
Held by Public	$31,454,000

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NOTE: The securities described under Schedule C are to be pledged under the new mortgages, or held as muniments of title, or canceled, or otherwise disposed of to effectuate the Plan, as the Joint Committee may direct.

III.

SECURITIES TO BE READJUSTED.

348 Bonds (Schedule E)	31,639,000.00
Stocks (Schedule E)	52,600,000.00
	$84,239,000.00
To which add for Special Items aforesaid:	
Improvement Notes	4,000,000.00
Tort-Claimants	1,875,000.00
Interest as above stated	6,671,394.50
	$96,785,394.50

Add Cash Requirements, estimated	7,300,000.00
Total	$104,085,394.50

IV.

DESCRIPTION OF NEW SECURITIES.

1. Thirty-Year First Real Estate and Refunding Mortgage 4% Gold Bonds, to be dated as of and bear interest from January 1st, 1912, or such other date as the Joint Committee may fix. 350

   This mortgage may not specify a limitation in respect of the amount of the authorized issue, but the issue of further bonds is to be carefully guarded by mortgage provisions.

   The first issue or installment of said bonds will be, as elsewhere in this Plan indicated, $16,768,100.

2. Thirty-Year Adjustment Mortgage 5% Income Gold Bonds (subject to First Real Estate and Refunding Mortgage), to be dated as of and to bear interest from January 1, 1912, or such other date as the Joint Committee may fix, limited to $33,000,000. 351

The holders of Adjustment Mortgage bonds shall have power, by a vote of a majority in amount thereof present or represented at meetings of the New Company or its stockholders held for that purpose, to elect one less than a majority of the members of Board of Directors of the New

Company until full interest at the rate of 5% per annum shall have been paid to the holders thereof, annually for three successive years, and again thereafter, for and during a like period, whenever a failure to pay such annual interest shall occur. During the period that the aforesaid voting power is operative, the holders of said bonds shall also have full power in respect of all other questions upon which stockholders may be entitled to vote. Each such holder shall be entitled to one vote for each $100 of the principal of
353 the bonds held by him. The mortgage securing said bonds shall provide for such other protection and for such method or methods of determining net income as the Committee shall fix.

Said First Real Estate and Refunding Mortgage Bonds shall be redeemable, upon 90 days' notice, at 105% and accrued interest, on and after such date in the year 1916 as may be stated in said bonds.

Said Adjustment Mortgage Income Bonds shall be redeemable at any time, upon 90 days' notice, at par and accrued interest, in whole, but not in part.

354 Mortgages to secure the aforesaid First Real Estate and Refunding (prior lien) Bonds and Adjustment (next lien) Bonds shall cover all property of the New Company therein described and shall be in such form as the Joint Committee may prescribe.

V.

DISTRIBUTION OF NEW SECURITIES.

1. For 5% Certificates representing present 5% Bonds and all coupons pertaining thereto and all interest on said bonds and coupons, as follows:

(*a*) For interest accrued thereon to January 1, 1912, amounting as of that date to $3,085,416.67: New 4% Bonds	$3,085,416.67	356
(*b*) For the principal of said bonds and the coupons and the interest claims pertaining thereto accruing after said date of issue: New 4% Bonds	3,164,583.33	357
New Adjustment Bonds	12,500,000.00	
		18,750,000

(Subject to Note A.)

2. For 4% Certificates representing present 4% Bonds and all coupons pertaining thereto and all interest on said bonds and coupons, as follows:

(*a*) For interest accrued thereon to January 1, 1912, amounting as of that date to $3,141,476.80: New 4% Bonds $3,141,476.80

(*b*) For the principle of said bonds and the coupons and interest
359 claims pertaining thereto accruing after said date of issue:
New 4% Bonds 1,009,523.20
New Adjustment Bonds 12,453,000.00
16,604,000

(Subject to Note A.)

3. For property of Central Crosstown Railroad Company, subject to mortgage securing $250,-
360 000 outstanding bonds of said Company, or in exchange for

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Note A. In case the holder of any such Certificate, by writing indorsed thereon or by words stamped thereon, or by force thereof, shall have tranferred to or vested in some other person, a part of the securities mentioned therein or an interest in the

Collateral Notes of said Company as hereinafter provided:

New 4% Bonds	$339,600	
New Adjustment Bonds	1,595,400	
		1,935,000

4. For First Mortgage Bonds of Metropolitan Crosstown Railroad Company and all coupons pertaining thereto and all ineerest on said bonds and coupons: 362

New 4% Bonds	$90,000	
New Adjustment Bonds	510,000	
		600,000

5. To Tort-Claimant:

New 4% Bonds	$937,500	
New Adjustment Bonds	1,875,000	
		2,812,500

6. The holders of said $4,000,000 Improvement Notes (Special Item 3) and $52,600,000 of stock (Schedule E) shall be entitled to representation in the bonds 363

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same, the securities allotted by this Plan in respect of such Certificate shall be apportioned and distributed by the Joint Committee accordingly, but without preference or priority of interest over interest or of principal over principal.

and stock of the New Company to the extent and on the terms following: to wit: to provide the estimated cash requirements, such holders shall pay $12.90 for each $100 face amount of said debt, without interest, and for each $100 par value of said stock held by them respectively. For each $100 so held by such depositing stockholder or note-
365 holder participating in the benefits of this Plan (and on surrender of said stock or indebtedness on which the privilege of participation is based and upon the payment of the above assessment) such participant shall receive:

New 4% Bonds to the face amount of	$8.83
New Adjustment Bonds to the face amount of	5.30
366	
New stock to the par amount of	30.91

The privilege hereby accorded is in full of all rights of the holders of such stock and debt in the premises. Such privilege is subject to the condition that it can only be exercised, (1)

save with the consent in writing of the Joint Committee, by any person or corporation in respect of all the stock and all the indebtedness held by him or it on November 29, 1911, or in which he or it had any legal or equitable interest on or before November 29, 1911, and not as to part thereof, and (2) subject to the provisions of the Plan and Agreement in that behalf. 368

Securities to be issued for cash requirements as above:

New 4% Bonds	$4,997,780	
New Adjustment Bonds	2,999,800	
Stock	17,495,060	

Held for adjustment of fractional lots and for such other purposes as the Joint Committee may decide: 369

New 4% Bonds	$2,220	
New Adjustment Bonds	200	
Stock	4,940	
Total		$25,500,000

Maximum total New Securities to be presently issued†	$66,201,500

The above total of new securities will consist of the following:

1. New 4% Bonds	$16,768,100
2. New Adjustment Bonds	31,933,400
3. Stock (or certificates representative thereof)‡	17,500,000
371	$66,201,500

If any claim of any right to be provided for or of the privilege to participate under this Plan shall be made by or on behalf of the holders of Improvement Notes other than the $4,000,000 of said notes mentioned as Special Item 3, in Article I. of this Plan, the Joint Committee shall have power to adjust such claim and to permit such holders to participate hereunder on terms which in the opinion of the Joint Committee shall not be more favorable than those extended to the

372 †Non-interest bearing scrip may be issued for fractional amounts of new bonds, convertible when presented in amounts of $1,000 into bonds bearing interest from the date of such bonds, and scrip for fractions of shares may be issued, convertible when presented in amounts of $100 into shares of stock or certificates representative thereof.

‡When the word "stock" or the phrase "certificates representative thereof" is used in the Plan it is the intention and it shall be construed to include thereby any and all voting trust certificates, stock trust certificates, participation certifi-

holders of Special Item 3; and the Joint Committee shall have the same power in respect of any other demands or liabilities of the Metropolitan Company and of any such claim of right or privilege by reason thereof; and if necessary or expedient, in the opinion of the Joint Committee, to make such adjustment, said Committee may, with or without reducing the amount above provided to be payable by the stockholders referred to, proportionately reduce the amount of new stock, or certificates representative thereof, above provided to be issued to assenting stock- 374
holders. The provision of this paragraph shall be in full of all rights in the premises of the persons holding or at any time making any claim to or by reason of said other Improvement Notes, demands or liabilities.

The Joint Committee shall have power to arrange with bankers, syndicates or other persons for the payment of all or such part of the Cash Requirements above mentioned as may not be paid by the holders of said debt and stock above mentioned, or any of them, on such terms and conditions and for such compensation as the Joint Committee may deem advisable, including the 375
transfer to the parties so arranged with of the securities tendered to said holders, or such part

The estimate of cash requirements made herein is believed to be a fair one. Under the terms of said

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cates or other evidences of right to stock or interest therein, or in the earnings applicable thereto, which the Joint Committee may deem it expedient to authorize or create, all necessary power and authority in that behalf being reserved to and vested in the Joint Committee.

thereof as may not be acquired by holders making such payment.

decrees of foreclosure, however, the purchasers may be called on to make up a sum in excess thereof. In order to raise any additional moneys which may be necessary to comply with the terms of said decrees, carry out the reorganization, or to carry out the purposes of, or discharge the liabilities of, the reorganization and to pay its expenses, the Joint Committee may, in its uncontrolled discretion, cause the New Company

377 (as and to the extent and in the manner permitted or prescribed by law) to issue and sell or dispose of additional securities to such extent as they may deem necessary or wise, to consist of additional New 4% Bonds, or other obligations, beyond those hereinabove mentioned. The Joint Committee, or the New Company may use or dispose of any assets or the proceeds of assets obtained by the foreclosure sales or through deficiency judgments thereon or otherwise in the possession of the Committee or its agents or the New Company for any purpose which it may deem advantageous for the reorganization.

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VI.

COMPARISON BETWEEN PRESENT CAPITALIZATION AND OBLIGATIONS

AND

PROPOSED NEW CAPITALIZATION.

1. Amount of securities to be readjusted by this Plan (Schedule E)	$104,085,394.50

Add Metropolitan Improvement notes referred to in foot note on page three which the Committee expects will not participate in the Reorganization	4,000,000.00	
	$108,085,394.50	
New Securities provided in lieu thereof	66,201,500.00	
Reduction	$41,883,894.50	380

2. Or, stated on the basis of including in the tabulation the outstanding securities remaineding undisturbed,

Outstanding Securities as per Schedules A and B, less as per Schedule C,	$115,693,000.00	
Special Items as per Nos. 3, 4, 5 and 6 of Article I hereof,	19,846,394.50	
Metropolitan Improvement notes described above,	4,000,000.00	
Total,	$139,539,394.50	381
Undisturbed and New Securities aggregate,	97,655,500.00	
Reduction,	$41,883,894.50	

VII.

MISCELLANEOUS.

All holders of 5% Certificates for coupon bonds now deposited with the 5% Committee or that may be deposited pursuant to said Bondholders' Agreement of March 5th, 1908, or to this Plan and the Agreement annexed thereto, on or before such date as the 5% Committee or the Joint Committee may fix, shall receive, if and when the reorganization is completed, in exchange for such certificates and for the bonds mentioned therein, and the coupons and interest claims pertaining thereto, the securities above allotted in respect thereof.

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All holders of 5% Certificates for registered bonds now deposited with the 5% Commttiee or that may be deposited pursuant to said Bondholders' Agreement of March 5, 1908, or to this Plan and the Agreement annexed hereto, on or before such date as the 5% Committee or the Joint Committee may fix, shall receive, if and when the reorganization is completed, in exchange for such certificates and for the bonds mentioned therein and the interest claims pertaining thereto, the securities above allotted in respect thereof.

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All holders of 4% Certificates for coupon bonds now deposited with the 4% Committee or that may be deposited pursuant to said Bondholders' Agreement of November 25, 1907, or to this Plan and the Agreement annexed thereto, on or before such date as the 4% Committee or the Joint Committee may fix, shall receive, if and when the reorganization is completed, in exchange for such certificates and for the bonds mentioned therein and the coupons and the interest claims per-

taining thereto, the securities above allotted in respect thereof.

All holders of 4% Certificates for registered bonds now deposited with the 4% Committee or that may be deposited pursuant to said Bondholders' Agreement of November 25, 1907, or to this Plan and the Agreement annexed hereto, on or before such date as the 4% Committee or the Joint Committee may fix, shall receive, if and when the reorganization is completed, in exchange for such certificates and for the bonds mentioned therein and the interest claims pertaining thereto, 386
the securities above allotted in respect thereof.

All other holders of 5% Bonds who shall come in and avail of the terms of the proposed Plan within a period that may be fixed by public notice published by the 5% Committee in accordance with the terms of said Bondholders' Agreement of March 5, 1908, and deposit their bonds with the Guaranty Trust Company of New York, the depositary named in said agreement, on such terms and penalties and within such period of time as the 5% Committee may fix, shall be entitled to make the same exchange as herein offered to the deposited 5% bonds.

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All other holders of 4% Bonds who shall come in and avail of the terms of the proposed Plan within a period that may be fixed by public notice published by the 4% Committee in accordance with the terms of said Bondholders' Agreement of November 25, 1907, and deposit their bonds with the Farmers' Loan and Trust Company, the depositary named in said agreement, on such terms and penalties and within such period of time as the 4% Committee may fix, shall be entitled to

make the same exchange as is herein offered to the deposited 4% Bonds.

All holders of said $4,000,000 (face amount) Improvement Notes (Special Items 3) who shall come in and avail of the terms of the Plan within the period and on the conditions that may be fixed by public notice, to be published by the Joint Committee in two newspapers published in the City of New York, four times in a period of ten successive days, and deposit said notes and pay the sum of one hundred and twenty-nine dollars on
389 each $1,000 face amount of said notes and at such times and in such amounts as the Joint Committee may prescribe, shall be entitled to receive, when the reorganization is completed, the following securities:

$88.30 in face value of New 4% Bonds;
53.00 in face value of New Adjustment Bonds;
309.10 in par value of new stock or certificates representative thereof for each $1,000 of the principal of each such note so deposited.*

390 All stockholders who shall come in and avail of the terms of the Plan within the period and on the conditions that may be fixed by public notice, to be published by the Joint Committee in two newspapers published in the City of New York four times in a period of ten successive days, and deposit such shares of stock and pay the sum of $12.90 on each share of $100 at such times and in such amounts as the Joint Committee may prescribe, shall be entitled to receive, when the reorganization is completed, the following securities:

$8.83 in face value of New 4% Bonds;
5.30 in face value of New Adjustment Bonds;
30.91 in face value of new stock or certificates representative thereof for each share so deposited.*

The Guaranty Trust Company of New York will act as the medium or agent to which all assessments shall be paid and through which all securities shall be issued therefor.

The Joint Committee, at such times and on such 392
terms and conditions as it may prescribe, may receive in its own name or for its account or otherwise, transfers and conveyances satisfactory to it of the franchises and property of the Central Crosstown Railroad Company, including its lease of the Christopher and Tenth Street Railroad Company, free and clear of all lien and incumbrance on said franchises and property of said Central Crosstown Railroad Company excepting the extended First Mortgage Bonds of the Central Crosstown Railroad Company to an aggregate principal amount not to exceed $250,000, and cause to be issued in return therefor the securities 393
above described or, in the discretion of the Joint Committee in lieu of such transfers and conveyances the Joint Committee may accept assignments of not less than 95% of the Collateral Notes of the Central Crosstown Railroad Company now outstanding in proportional exchange for the se-

*The exercise of this privilege is subject to the conditions hereinbefore stated in Article V. hereof.

curities above described under Section 3 of Article V. hereof.†

The Joint Committee, on such public notice and at such times as it may prescribe, may receive, in its own name or for its account or otherwise, First Mortgage Bonds of the Metropolitan Crosstown Railroad Company, with all coupons maturing after October 1, 1908, attached uncanceled, and causes to be issued therefor the securities above described. The powers of the Joint Committee with respect to said Central Crosstown Railroad
395 Company property and notes and with regard to said bonds of the Metropolitan Crosstown Railroad Company may by the Joint Committee in its discretion be vested in by the New Company.†

If and to the extent that the same may be authorized by law and if and to the extent that the lawful authorities of the State of New York having jurisdiction in the premises may authorize and approve the same, all Tort-Claimants (as herein defined), who shall come in and avail themselves of the terms of this Plan within the period that may be fixed by public notice, to be published by

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396 †If the Joint Committee shall not receive a transfer and conveyance of the franchises and property of the Central Crosstown Railroad Company and does not consent to the exchange of Collateral Notes as is above provided for, or if the tender by this Plan authorized shall not be accepted by the holders of the bonds of the Metropolitan Crosstown Railroad Company or by the Tort-Claimants, the Joint Committee shall have authority to consummate this Plan in other respects, and the provisions of this Plan in such other respects shall be in nowise affected by the non-receipt of such transfers and conveyances or by any non-acceptance of such tender.

the Joint Committee in two newspapers published in the City of New York four times in a period of ten successive days, and deposit the evidence of the allowance of each of such claims with a depositary designated by the Joint Committee in such notice, together with an assignment of such claims and allowances and any and all judgments representing the same, to such person and such form as the Joint Committee may require, shall be entitled, when the reorganization is completed, to receive, in proportion to their respective allowances (without interest), the securities above described. Suitable receipts will be issued by such depositary on deposit of the evidence of allowance of claims and assignments as above specified.† 498

Public notice shall be given by the Joint Committee in the manner aforesaid, at a time to be fixed by it, offering the stockholders and noteholders the privilege of availing of the Plan on the terms above specified. All stockholders or noteholders availing thereof shall deposit their stock or notes with a depositary to be named by the Joint Committee, and make such depositary the payments required at such time and in such amounts as the Joint Committee may specify, and receive suitable receipts therefor of deposit for stock or notes which shall be stamped with receipt for payment as made. 499

All bonds, shares of stock, notes and tort claims deposited or acquired pursuant to this Plan (including all 5% bonds and 4% bonds remaining in the hands of Joint Committee or the hands of the 5% Committee or the 4% Committee received in exchange for securities allotted under this Plan, together with all rights appertaining thereto, excepting to participate in cash held by the trustees

under the mortgages respectively securing the same, which cash, if any, will be distributed by said trustees to the persons respectively entitled thereto) shall be dealt with and disposed of as the Joint Committee may deem expedient in effectuating the purposes of the Plan and the matters therein provided for, and the Joint Committee shall have authority, in its discretion, to vest such power in the New Company.

CONDITIONS OF PLAN BECOMING EFFECTIVE.

401 This plan shall become effective and binding upon the holders of 5% Certificates for bonds held by the 5% Committee and the 4% Certificates for bonds held by the 4% Committee either when and if:

I. Notice of adoption or approval of this Plan by the 5% Committee is published in accordance with the Bondholders' Agreement of March 5, 1908, and within thirty days from the first publication of such notice of outstanding certificates of deposit representing one-third in face amount of the deposited 5% Bonds shall not file notices
402 of dissent from this Plan in accordance with said agreement; and

2. Notice of filing of this Plan by the 4% Committee is published in accordance with the Bondholders' Agreement of November 25, 1907, and within thirty days after the last publication of such notice holders of certificates of deposit representing one-third in face amount of the deposited 4% Bonds shall not file notices of dissent from this Plan in accordance with said agreement.

Provided always that if the holders of two-thirds of the 5% certificates, or the holders of two-thirds of the 4% certificates, assent to this Plan before the lapse of the time specified in the 5% agreement or the 4% agreement, respectively, such assent shall be deemed to have the same effect as the failure to dissent in accordance with the terms of said agreements, or either of them.

POWERS OF JOINT COMMITTEE AND OF 5% COMMITTEE AND OF 4% COMMITTEE.

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This plan is formulated by the Joint Committee by the authority and with the approval, properly evidenced, of the 5% Committee and the 4% Committee. The 5% Committee and the 4% Committee have each, by due action, approved and adopted this Plan as its own, with the same force and effect as if each said Committee or said two Committees jointly had promulgated the Plan in the exercise of the power and authority vested in the 5% Committee by the Bondholders' Agreement of March 5, 1908, and in the 4% Committee by the Bondholders' Agreement of November 25, 1907, and with like force and effect. A certain Plan dated October 1, 1910, is superseded by this Plan. 408

It is intended that the 5% Committee and the 4% Committee shall co-operate in carrying out the Plan acting so far as may be practicable through the Joint Committee. The Joint Committee may construe the Plan, and its construction thereof or action thereunder shall be final and conclusive. It may supply any defect or omission or reconcile any inconsistency in such manner and to such extent as may be necessary in its judgment to

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carry out the same effectively. The Joint Committee and the 5% Committee and the 4% Committee shall prepare and execute all necessary agreements to carry the Plan into effect and to effect the exchange of securities provided for, whether such agreements be with depositing or non-depositing security-holders or stockholders of the corporation to be formed.

The Joint Committee shall have full power (subject, in respect of any change, modification, supplement or amendment which in the opinion of the
407 5% Committee or of the 4% Committee will materially affect the rights of the holders of the 5% Certificates or of the 4% Certificates, to the approval of the 5% Committee and of the 4% Committee, to abandon, change, modify, supplement or amend the Plan, and the same power may be exercised by the concurrent action of the 5% Committee and the 4% Committee.

In the event the Joint Committee shall desire to make any change or modification or departure from the Plan which in the judgment of the 5% Committee or the 4% Committee shall materially affect the holders of the 5% Certificates or the
408 4% Certificates, a statement of such alterations shall be submitted to such certificate holders for approval in accordance with the terms of said Bondholders' Agreements of March 5, 1908, and November 25, 1907, respectively.

The powers of the 5% Committee under the Bondholders' Agreement of March 5, 1908, and the powers of the 4% Committee under the Bondholders' Agreement of November 25, 1907, shall not in any respect terminate by the adoption of the Plan by the action of the action of the depositing certificate holders, or its rejection by action of the

holders of 5% Certificates or 4% Certificates, or its abandonment by act of the Joint Committee.

The Joint Committee may procure the organization of a new company or companies, or may adopt or use any existing or future companies, and may cause to be made such consolidations, leases, sales or other arrangements, and may make such conveyances or transfers of any properties or securities acquired by the Joint Committee or the 5% Committee or the 4% Committee, including the settlement and disposition of claims acquired by them or the disposal of assets acquired 410
by them, and may take such other steps as the Joint Committee may deem proper for the purpose of creating the new securities provided for in the Plan and carrying out all or any of the provisions thereof.

As above stated, this Plan and the annexed Agreement are formulated and promulgated with reference to and are subject to the provisions of Sections 9 and 10 of the Stock Corporation Law of the State of New York. In case of any inconsistency between any provision of this Plan or said Agreement and of said Section 9 or said Section 10, the said statutory provisions shall prevail. 411
Any question of the construction, force or meaning of the provisions of this Plan or of said Agreement, or of any part thereof, shall be controlled by the terms and true intent and meaning of said statutory provisions. In case it should be found that any provision of this Plan or of said Agreement is contrary to or not authorized by the said statutory provisions, the same shall be treated as severable, and the remainder of this Plan and of the said Agreement shall not be

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affected by any such want of authority to insert the same or because of any invalidity thereof.

GUY E. TRIPP,
Chairman.
EDW. H. LADD, JR.,
WM. P. DIXON,
OTTO H. KAHN,
A. J. HEMPHILL,
Ex officio.

413 EDWIN S. MARSTON,
Ex officio.
Joint Committee.

A. J. HEMPHILL,
Secretary.

A. J. HEMPHILL,
Chairman.

EDW. H. LADD, JR.,
HENRY EVANS,
DONALD MACKAY,
WM. P. DIXON,
5% Committee.

L. B. FRANKLIN,
414 Secretary.

EDWIN S. MARSTON,
Chairman.

OTTO H. KAHN,
R. Y. HEBDEN,
GUY E. TRIPP,
EDWIN M. BULKLEY,
4% Committee.

FREDERICK GELLER,
Secretary.

SCHEDULE A.

OUTSTANDING BONDS AND OTHER FUNDED OBLIGATIONS.

1. Lexington Avenue and Pavonia Ferry Railroad Company First Mortgage Fives, due September 1, 1993,	5,000,000
2. Metropolitan Crosstown Railway Company First Mortgage Fives, due April 1, 1920	600,000
3. Metropolitan Crosstown Railway Company Bonds, Fives, due May 1, 1901 (Held under the Refunding Mortgage),	300,000
4. Columbus and Ninth Avenue Railroad Company First Mortgage Fives, due September 1, 1993,	3,000,000
5. South Ferry Railroad Company First Mortgage Fives, due April 1, 1919,	350,000
6. Broadway Surface Railroad Company First Mortgage Fives, due July 1, 1924,	1,500,000
7. Broadway Surface Railroad Company Second Mortgage Fives, due July 1, 1905 (Held under the Refunding Mortgage),	1,000,000

8. Thirty-fourth Street Crosstown Railway Company First Mortgage Fives, due April 1, 1996, 1,000,000

9. Real Estate Mortgages for $150,000 and $200,000, respectively (Held under the Refunding Mortgage), 350,000

10. Real Estate Mortgage, 950,000

11. Broadway and Seventh Avenue
419 Railroad Company First Mortgage Fives, due June 1, 1904 (Held under the Refunding Mortgage), 1,500,000

12. Broadway and Seventh Avenue Railroad Company Second Mortgage Fives, due July 1, 1914, 500,000

13. Broadway and Seventh Avenue Railroad Company First Consolidated Mortgage Fives, due
420 December 1, 1943, 7,650,000

14. Twenty-third Street Railway Company First Mortgage Sixes, due January 1, 1909 (of which $200,000 have been decreed to be held under the Refunding Mortgage, and the remainder are claimed to be subject thereto), 250,000

15. Twenty-third Street Railway Company 5% Debenture Bonds, due January 1, 1906 (Held under the Refunding Mortgage), 50,000

16. Bleecker Street and Fulton Ferry Railroad Company Mortgage Fours, due January 1, 1950, 700,000

17. Forty-second Street and Grand Street Ferry Railroad Company First Mortgage Sixes, due January 1, 1909 (of which $200,000 have been decreed to be held under the Refunding Mortgage, and the remainder are claimed to be subject thereto), 422 236,000

18. Eighth Avenue Railroad Company 6% Scrip, due February 1, 1914, 750,000

19. Christopher and Tenth Street Railroad Company Extended Fours, due October 1, 1918, 423 210,000

20. Central Crosstown Railroad Company First Mortgage Sixes, due November 1, 1922, 250,000

21. Central Crosstown Railroad Company 5% Notes due May 1, 1909, secured by a pledge of

$2,490,000 of said Company's First Consolidated Mortgage 4% Bonds (unpaid balance),	1,935,000
22. Metropolitan Street Railway Company General and Collateral Trust Mortgage Fives, dated February 1, 1897,	12,500,000
23. Metropolitan Street Railway Company Refunding Mortgage Fours, dated April 1, 1902.	16,604,000
425 Total,	$57,285,000

SCHEDULE B.

OUTSTANDING STOCKS.

1. Broadway and Seventh Avenue Railroad Company (of which $1,400,000 are held under the General Mortgage),	2,100,000
426 2. Sixth Avenue Railroad Company,	2,000,000
3. Ninth Avenue Railroad Company,	800,000
4. Twenty-third Street Railroad Company,	600,000
5. Bleecker Street and Fulton Ferry Railroad Company,	900,000

6. Forty Second Street and Grand Street Ferry Railroad Company (of which $400,000 are held under the General Mortgage),	748,000	
7. Eighth Avenue Railroad Company,	1,000,000	
8. New York and Harlem Railroad Company (City Line) Proportion of entire capital stock allotted (for the purposes of this Schedule and Plan(to said City Line,	2,500,000	428
9. Christopher and Tenth Street Railroad Company,	650,000	
10. Central Crosstown Railroad Company,	600,000	
11. Thirty-fourth Street Crosstown Railway of which $990,000 are held under the General Mortgage),	1,000,000	429
12. Fort George and Eleventh Avenue Railroad Company (Held under the Refunding Mortgage),	3,000,000	
13. One Hundred and Forty-fifth Street Railway Company(issued) (Held under the Refunding Mortgage, together		

with subscription rights to the remainder of the authorized issue of said stock),	2,000
14. Metropolitan Street Railway Company,	52,000,000
Total	$67,900,000

SCHEDULE C.

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SECURITIES TO BE ACQUIRED UNDER FORECLOSURE SALE.

Bonds:

1. Metropolitan Crosstown Railway Company Fives, due May 1, 1901,	$300,000
2. Broadway Surface Railroad Company Second Mortgage Fives, due July 1, 1905,	1,000,000

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3. Real Estate Mortgages for $150,000 and $200,000, respectively,	350,000
4. Broadway and Seventh Avenue Railroad Company First Mortgage Fives, due June 1, 1904,	1,500,000
5. Twenty-third Street Railway Company First Mortgage Sixes, due January 1, 1909,	200,000

6. Twenty-third Street Railway Company Five Per Cent. Debentures, due January 1, 1906,	150,000	
7. Forty-second Street and Grand Street Ferry Railroad Company First Mortgage Sixes, due January 1, 1909,	200,000	
Total,	$3,700,000	

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Stocks:

1. Broadway and Seventh Avenue Railroad Company,	$1,400,000	
2. Forty-second Street and Grand Street Ferry Railroad Company,	400,000	
3. Thirty-fourth Street Crosstown Railway Company,	990,000	
4. Fort George and Eleventh Avenue Railroad Company,	3,000,000	435
5. One Hundred and Forty-fifth Street Railway Company,	2,000	
Total,	$5,792,000	

SCHEDULE D.

UNDISTRIBUTED SECURITIES.

Bonds:

Nos. 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of Schedule A.	$25,646,000

Stocks:

437 Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 of Schedule B.	15,300,000
	$40,946,000
Deductions, Schedule C.	9,492,000
Balance,	$31,454,000

SCHEDULE E.

SECURITIES AND OBLIGATIONS TO BE READJUSTED AND TREATED.

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Bonds:

1. Metropolitan Crosstown First Mortgage Fives,	$600,000
2. Unpaid balance of Central Crosstown Collateral Notes	1,935,000

3. Metropolitan General and Collateral Mortgage Fives	12,500,000	
4. Metropolitan Refunding Mortgage Fours	16,604,000	
Total,		31,639,000
Stocks:		
1. Central Crosstown,	$600,000	440
2. Metropolitan,	52,000,000	
		52,600,000
Special Items as described in Article I.		19,846,394.50
Total,		$104,085,390.50

Agreement.

AN AGREEMENT made as of the 29th day of November, 1911, between ALEXANDER J. HEMPHILL, DONALD MACKAY, EDWARD H. LADD, JR., WILLIAM P. DIXON and HENRY EVANS, a committee (herein referred to as the 5% Committee) constituted pursuant to an agreement dated March 5, 1908 (herein referred to as the 5% Agreement) for the protection of holders of General Mortgage Five Per Cent. Bonds of the Metropolitan Street Railway Company (herein referred to as the 5% Bonds) parties of the first part, and the holders of certificates of deposit issued to bondholders who have deposited or may deposit 441

their bonds under said agreement and now are or shall hereafter become parties thereto, and thereby parties hereto (herein referred as 5% Certificate Holders), parties of the second part and EDWIN S. MARSTON, EDWIN M. BULKLEY, ROBERT Y. HEBDEN, OTTO H. KAHN and GUY E. TRIPP, a committee (herein referred to as the 4% Committee) constituted pursuant to an agreement dated November 25, 1907 (herein referred to as the 4% agreement), for the protection of holders of Refunding Mortgage Four Per Cent.
443 Bonds of the Metropolitan Street Railway Company (herein referred to as the 4% Bonds), parties of the third part, and the holders of certificates of deposit issued to bondholders who have deposited or may deposit their bonds under said agreement and now are or shall hereafter become parties thereto, and thereby parties hereto (herein referred to as 4% Certificate Holders), parties of the fourth part, and GUY E. TRIPP, WILLIAM P. DIXON, OTTO H. KAHN and EDWARD H. LADD, JR., a committee (herein referred to as the Joint Committee) created by the 5% Committee and the 4% Committee and by this agree-
444 ment to act as a Joint Committee for the reorganization of the Metropolitan Street Railway Company, of which Committee Alexander J. Hemphill, Chairman of the 5% Committee, and Edwin S. Marston, Chairman of the 4% Committee, are *ex-officio* members, parties of the fifth part:

WHEREAS decrees of foreclosure and sale have been duly entered in proceedings in the Circuit Court of the United States for the Southern District of New York, instituted by the trustee under

said General Mortgage of the Metropolitan Street Railway Company (herein called the Metropolitan Company) to foreclose said mortgage which was executed to secure the 5% Bonds, and also in proceedings instituted by the trustee under the Refunding Mortgage of the Metropolitan Company to foreclose said mortgage which was executed to secure the 4% Bonds, and said foreclosure sales thereunder are now severally set for December 29, 1911; and

WHEREAS the 5% Committee and the 4% Committee are each, under the agreements by which they are respectively constituted, empowered to purchase or cause to be purchased at said foreclosure sale the properties of the Metropolitan Company and to formulate a plan of and carry out the reorganization of the Metropolitan Company, and the 5% Committee and the 4% Committee have by joint action constituted from their number the Joint Committee to formulate and carry out such plan of reorganization, and the Joint Committee has formulated and adopted the foregoing Plan and it has been also adopted and approved by the 5% Committee and the 4% Committee respectively:

NOW, THEREFORE, in consideration of the premises and of the mutual promises herein, each 5% Certificate Holder and each 4% Certificate Holder does agree with each other 5% Certificate Holder and 4% Certificate Holder and with each of the Committees parties hereto as follows:

FIRST. The foregoing plan of Reorganization of the Metropolitan Company has been prepared by

the Joint Committee and adopted and approved by the 5% Committee and the 4% Committee pursuant to power severally vested in them under the agreements by which they were respectively constituted; duplicate printed copies thereof, including copies of this agreement signed by a majority of the Joint Committee, have been lodged with Guaranty Trust Company of New York and The Farmers' Loan and Trust Company, respectively, as Depositaries, and said two copies of the Plan and Agreement shall be deemed the originals
449 thereof. The foregoing Plan is taken to be a part of this Agreement with the same force and effect as though each and every provision thereof was embodied herein, and said Plan and this Agreement shall be construed together as forming one instrument.

Notice of the fact of adoption of the Plan shall be given in the following manner:

A brief notice thereof shall be published, as stated in the Plan, in accordance with the 5% Agreement and also in accordance with the 4% Agreement.

If more than one-third in amount of the 5%
450 Certificate Holders or more than one-third in amount of the 4% Certificate Holders shall file notice of dissent from the Plan, as provided in said respective agreements, then the Plan shall cease to be operative or effective. Notwithstanding such dissent, however, the Joint Committee may thereafter at any time prepare and adopt or approve another plan or plans of reorganization.

If the holders of two-thirds of 5% certificates or the holders of two-thirds of the 4% certificates assent to the Plan before the lapse of the time specified in the 5% agreement or in the 4%

agreement respectively such assent shall be deemed to have the same affect as the failure to dissent in accordance with the terms of said agreements or either of them. If neither one-third of the 5% Certificate Holders nor one-third of the 4% Certificate Holders shall within the times specified in the 5% Agreement and the 4% Agreement respectively file notices of dissent from the Plan (or if the equivalent assents shall be affirmatively given) then the Plan shall be deemed forthwith in effect and binding on all the 5% Certificate Holders and the 4% Certificate 452
Holders, and forthwith and thenceforth the Joint Committee shall be deemed to hold and possess and be entitled to exercise all the powers, rights and duties of the 5% Committee and the 4% Committee, and all bonds, coupons, cash, property and securities deposited with or held by or for the 5% Committee and deposited with or held by or for the 4% Committee, shall become and forthwith be vested in the Joint Committee and subject to its order and disposal for the purposes of carrying out the foregoing Plan, and, in case the said Plan shall be abandoned, of formulating and carrying out another plan of reorganization. In 453
the event that the Plan and this Agreement shall become effective and binding, then the depositaries under the 5% Agreement and the 4% Agreement, respectively, shall henceforth act as Depositaries of and subject to the order of the Joint Committee under this Agreement.

In the event that the Joint Committee shall at any time acquire or cause to be acquired said properties of the Metropolitan Company or any of them at foreclosure sale or otherwise, or any

other property for the purposes of the Plan, then, pending the approval and final consummation of the Plan, or if the Plan shall be abandoned as herein provided, the Joint Committee shall hold all such property, or cause it to be held, for the joint benefit of the 5% Certificate Holders and the 4% Certificate Holders in accordance with their respective rights and interests.

Any amounts in cash to which the holders of 5% Certificates or of 4% Certificates may become entitled as part of the proceeds of any sale
455 under said foreclosure decrees, shall be applied and disposed of as the Joint Committee may direct or determine.

SECOND. At either of the foreclosure sales above referred to, whenever held, the Joint Committee may cause a bid or bids to be made for all or any part of the property there disposed of, and purchase the same. Said bid or bids shall be at such price and terms as the Joint Committee may deem advisable, and all or any part of said property may be purchased subject to any or all liens or charges then existing and expenses
456 of foreclosures and other expenses, and the Joint Committee may make any arrangements or borrowings that may be necessary to accomplish such purchases.

The Joint Committee may, in its discretion, appoint a sub-committee or other agency or nominee, to be called a Purchasing Committee to which it may delegate the power to bid for such property at all or any of such foreclosure sales, subject to the direction of the Joint Committee, and a single member of the Purchasing Committee, acting with the approval of at least two of his fel-

low-members, may make a bid or bids in his individual name for and on account of the Joint Committee and become the purchaser at said foreclosure sales or any of them.

In the event of any bid or bids made at any or all of said foreclosure sales by the Joint Committee or for its account being accepted, the Joint Committee is authorized to pay in cash such portions of the purchase price as is required, under the decrees or terms of sales, and for the purpose of providing such cash, the Joint Committee may pledge all or any part of the bonds, properties 458
or securities deposited with it or with the 5% Committee or with the 4% Committee; and the Joint Committee may use any or all said bonds or securities in making payment of the balance of said price or prices, and may apply the same to such payment in accordance with the respective decrees of sale.

THIRD. If the Joint Committee or its agent or nominee shall purchase or acquire the mortgaged premises of the Metropolitan Company either at said foreclosure sales or otherwise, and if the Plan shall have become binding and effective 459
as herein provided, then the Joint Committee will use all reasonable diligence and its best endeavors to effectuate and carry out the Plan.

The Joint Committee may cause any successful bid for the mortgaged premises or any part thereof to be assigned to the Joint Committee, or its nominee or nominees, or may cause the purchaser to take title and convey the same to the Joint Committee, or its nominee or nominees, and the Joint Committee, or its nominee or nominees, may (to the extent permitted by law) take pos-

session of the same, until such time as the control and operation of the said mortgaged premises and property, together with the bonds, securities and properties deposited hereunder or with the 5% Committee or the 4% Committee, may be lawfully conveyed to a corporation empowered to take over said property and operate the same and empowered to issue to the Joint Committee or its nominees in consideration and exchange therefor legal securities of such corporation of the character and amount provided in the Plan.

461 A failure to effectuate the Plan and carry it out shall not terminate this agreement or the powers of the Joint Committee, but if at any time hereafter it appears in the judgment of the Joint Committee that it will be impossible or impracticable to carry out or effectuate the same, the Joint Committee shall give notice of the abandonment of the Plan by publication, in such manner and form as the Joint Committee may determine or approve, in two newspapers published in the City of New York four times in a period of ten successive days, and thereupon and in the event that any properties have been purchased at

462 foreclosure sale or sales or been otherwise acquired by or for the Joint Committee, the same shall be deemed to have been acquired and held for the joint benefit of the 5% Certificate Holders and the 4% Certificate Holders, in accordance with their respective rights and interests; but the Joint Committee may proceed from time to time and at any time to formulate and give notice of adoption of another plan of reorganization.

FOURTH. The Joint Committee may proceed under the Plan and under this Agreement with or

without foreclosure of the General Mortgage or the Refunding Mortgage, as they deem best, and may exercise any power herein after all or any of the foreclosure sales.

The Joint Committee may procure the organization of a new company or companies, or may adopt or use any existing or future companies, and may cause to be made such consolidations, leases, sales or other arrangements, and may make such conveyances or transfers of any properties or securities acquired by the Joint Committee, and take such other steps as the Joint Committee 464
may deem proper, for the purpose of creating the new securities provided for in the Plan and carrying out all or any of the provisions hereof, and these powers shall include the purchase or acquisition of properties other than those acquired or to be acquired at such foreclosure sales. The Joint Committee may use the powers herein granted for the operation of the properties of the Metropolitan Company pending approval of the Plan, or in the event that it be abandoned or cannot be effectuated, pending the preparation and carrying out of another plan of reorganization.

The Joint Committee may, in the event that it 465
shall become a purchaser at any or all of said foreclosure sales or in the event that such a purchase is made for its account, in its discretion exercise all powers as such purchaser to approve, affirm or disaffirm all contracts or leases appurtenant to all or any part of said properties so purchased, and shall further be empowered, in its discretion, to purchase or acquire any properties or securities having any relation to the Metropolitan Company, on such terms and in such manner as it may determine.

FIFTH. In respect of holders of 5% Bonds or 4% Bonds who have not deposited under the 5% Agreement or the 4% Agreement, and who do not participate in the Plan in the manner above provided, the Joint Committee, in the event of purchase or acquisition by or for its account of the mortgaged premises and property, or any or all thereof, is empowered to provide the necessary cash and pay or cause to be paid to such non-participating bondholders the amount due. The Joint Committee is also empowered in the same
467 event to provide the necessary cash for and to purchase or acquire the rights or securities of any other person who might become entitled to share in the securities contemplated by the Plan, and to hold and apply the same for the purposes of the reorganization.

SIXTH. The Plan contemplates the allotment on certain conditions, to holders of stock and certain debts of the Metropolitan Company as therein stated and stock of the Central Crosstown Railroad Company as therein stated and to Tort-Claimants as therein stated, of certain new se-
468 curities on the exercise by such holders of stock and debt of the privilege stated in the Plan, and the Plan also contemplates the allotment of new securities, on certain conditions as therein stated, to the owners of the franchises and property of Central Crosstown Railroad Company or its Collateral Note holders and to the holders of First Mortgage Bonds of Metropolitan Crosstown Railroad Company. Such holders of stock and debt and such Tort-Claimants, and such owners of franchises and property of Central Crosstown Railroad Company or its Collateral Notes and

such holders of bonds of Metropolitan Crosstown Railroad Company, however, are not to be deemed by reason of such provision of the Plan to acquire or to have acquired any right to the allotment or delivery of new securities or subscriptions thereto, or any right whatsoever under the Plan, or to be deemed by virtue thereof to have become parties to this Agreement or to the 5% Agreement or the 4% Agreement above mentioned, this Agreement and said Agreements having been entered into exclusively by 4% Certificate Holders and 5% Certificate Holders for the mutual pro- 470
tection of such certificate holders alone.

Holders of stock or debt and of Metropolitan Crosstown Railroad Company Bonds as above stated and Tort-Claimants who deposit their stock or evidences of debts or evidences of claim in the manner herein and in the Plan provided, or who may transfer the same to or for account of the Joint Committee in the manner herein and in the Plan provided, shall receive such appropriate certificates or evidences of deposit or transfer in such form as the Joint Committee may issue or cause to be issued, but shall hold such certificates or such evidences of deposit subject to the power of 471
the Joint Committee at any time in the event of an abandonment of the Plan or by reason of any other contingency in its discretion to terminate the agreement of deposit by the return of said stock, or evidences of debt, or claim, and any amount paid to or for account of the Joint Committee for assessment or otherwise, but without interest, and after first deducting therefrom such sum as it may fix on account of expenses incurred, except that in case of abandonment of the Plan no amount shall be deducted from the Tort-Claimants

on account of expenses incurred. In case the Joint Committee in pursuance of the Plan or this Agreement shall require a transfer of the franchises and property of the Central Crosstown Railroad Company, such transfer may be arranged in escrow in such manner as the Joint Committee may prescribe, with power to the Joint Committee, in the event of abandonment of the Plan or termination thereof as above stated, to cancel the same on payment to it of such sums as it may fix on account of expenses incurred.

473 SEVENTH. The Joint Committee may construe this Agreement, including the Plan, and its construction thereof or action thereunder, in good faith shall be final and conclusive. It may supply any defect or omission, or reconcile any inconsistency in such manner and to such extent as shall in its judgment be necessary to carry out the same properly and effectually.

EIGHTH. No estimate, statement, explanation or suggestion contained in the foregoing Plan or in any petition or circular issued, or which may hereafter be issued, by either Depositary or by the
474 Joint Committee or the 5% Committee or the 4% Committee or any other body or person, is intended or is to be taken or construed as a representation or warranty, or as a binding condition of deposit thereunder, and no defect or error therein shall release any deposit thereunder except by consent of the Joint Committee. Any moneys paid under or with reference to said Plan or this Agreement shall be paid over by the Depositaries to the Joint Committee, and shall be applicable for any of the purposes of the Plan and Agree-

ment as may from time to time be determined by the Joint Committee, whose determination as to the propriety and purposes of any such application shall be final, and nothing in the Plan shall be understood as limiting or requiring the application of specific moneys to specific purposes. No liability in respect or in favor of any bonds, stocks, obligations, debts or claims not called for and accepted on deposit hereunder, nor in favor of any lease or contract, is assumed hereunder, or by or for any new company (notwithstanding any mention thereof, or estimate in respect thereto, or reservation of securities to provide therefor, in the Plan), nor is any trust, in their favor created or impressed upon any deposit or payment hereunder, or upon any securities to be issued under the Plan. Any obligation in the nature of floating debt or otherwise against any company or property embraced in or relating to the Plan, either as proposed or as carried out, or any securities held as collateral for any such obligation, may be acquired or extinguished or held by the Joint Committee at such times, in such manner and upon such terms as it may deem proper for the purposes of reorganization, but nothing contained in the Plan or in this Agreement is intended to constitute, nor shall it constitute, any liability or trust in favor or in respect of any such obligation. 476 477

Each and every person who may become entitled to receive any of the securities in the Plan and this Agreement provided for shall accept in full payment and exchange for the securities in respect of which such provision is made, the securities specified in the Plan to be delivered at the rates and on the conditions in the Plan specified;

and no depositor or holder of any receipt or otherwise entitled to any right or claim in the premises shall have any interest in the disposition of any other of the securities of the New Company by it to be issued and to be delivered to or for account of any other depositor or otherwise in accordance with any arrangement or provision made or approved by the Joint Committee, or any proceeds of any such other securities.

Any bonds or other securities acquired by the New Company shall, unless expressly and in terms
479 canceled and released by or upon the authority of the Joint Committee, remain in full force and effect for all purposes, without impairment or extinguishment of obligation or lien, and shall not be deemed have been in anywise satisfied, released or discharged.

NINTH. The Joint Committee may from time to time make contracts with any person, syndicate or corporation, for the purpose of carrying this Plan and Agreement into effect, and any member of the Joint Committee, or the 5% Committee, or the 4% Committee, or the Depositaries hereunder, or the depositaries under the 5% Agreement or the 4%
480 Agreement, may become a member of any such syndicate, or may become financially interested therein. The Joint Committee may employ counsel, agents, any and all necessary assistance, and may incur and discharge any and all expenses of the Joint Committee deemed reasonable for the purposes of this Plan and Agreement, and the Joint Committee shall fix the compensation of counsel, including counsel hereinbefore employed, the Depositaries hereunder, and including their own compensation. The Joint Committee may

prescribe the form of all securities and of all instruments at any time to issued or entered into under this Agreement. It may create and provide for all necessary trusts, and may nominate and appoint trustees thereunder.

TENTH. Any balance of cash received by the Joint Committee and any balance of securities remaining in the hands of the Joint Committee (including 5% bonds and 4% bonds remaining in the hands of the Joint Committee or the 5% Committee or the 4% Committee received in exchange 482
for securities allotted under the Plan, together with all rights appertaining thereto, excepting to participate in cash held by the Trustees under the mortgages respectively, securing the same) after paying or fully providing for all sums payable under the decrees, or the purchase price of property to be acquired under the plan, and all obligations and expenses of the Joint Committee, including the compensation of the syndicate hereinbefore mentioned and the compensation and expenses of the Depositaries and of the Joint Committee and of the 5% Committee and of the 4% Committee, may be turned over by the Joint Committee to the 483
New Company.

The 5% Committee and the 4% Committee may from time to time increase the number of the Joint Committee and provide for appointing successors thereto and for filling vacancies thereon, except that in case of the death, resignation or inability to act of said Dixon or said Ladd, the successors thereto, respectively, shall be appointed by the 5% Committee, and in case of the death, resignation or inability to act of said Kahn or said Tripp, the successors thereto, respectively,

shall be appointed by the 4% Committee. All the powers herein or in the Plan granted or reserved to the Joint Committee shall be vested in the Joint Committee as it shall from time to time be constituted, either by addition to its numbers, the designation of successors, or otherwise.

The Joint Committee, upon the termination of its duties, may file its accounts, including the account of its actual expenses and disbursements, or a duplicate thereof, with each the Guaranty Trust Company of New York and The Farmers'
485 Loan and Trust Company, and thereupon the Joint Committee shall be discharged from all its duties and obligations. Said Committee may thereupon give a notice of the filing thereof by publication twice a week for two successive weeks in the "New York Times" and "The Evening Post," two newspapers published the Borough of Manhattan, City of New York. Unless legal proceedings impeaching the correctness of such account shall be duly commenced within sixty days after the last publication of such notice, such statement of accounts as against all parties interested therein shall be conclusively presumed
486 to be in all respects correct. No member of either the Joint Committee, or the 5% Committee, or the 4% Committee, shall be in any event held liable for any act of omission in and about the matters mentioned in the Plan or this Agreement save and except only each individual separately for his own wilful default.

The New Company shall make and perform any agreements which the Joint Committee may require, and shall adopt and agree to perform any and all agreements which may have been made or which may be made by the Joint Committee here-

under, and any agreement which the Joint Committee shall require with respect to the issue of the new securities hereinbefore provided for and with respect to the purchase or acquisition of property or securities.

The New Company shall assume all the obligations and liabilities of the Joint Committee in connection with such sale and purchase or with the reorganization herein provided for, and shall indemnify the Joint Committee against all its acts and liabilities an the consequences thereof.

488

GUY E. TRIPP,
Chairman.

EDW. H. LADD, JR.,
WM. P. DIXON,
OTTO H. KAHN,
A. J. HEMPHILL,
Ex officio.

EDWIN S. MARSTON,
Ex officio.
Joint Committee.

489

A. J. HEMPHILL,
Secretary.

A. J. HEMPHILL,
Chairman.

EDW. H. LADD, JR.,
HENRY EVANS,
DONALD MACKAY,
WM. P. DIXON,
5% Committee.

490 JOHN W. HAMER, et al. *vs.*

L. B. FRANKLIN,
Secretary.

EDWIN S. MARSTON,
Chairman.

OTTO H. KAHN,
R. Y. HEBDEN,
GUY E. TRIPP,
EDWIN M. BULKLEY,
4% Committee.

491 FREDERICK GELLER,
Secretary.

492

NEW YORK RAILWAYS COMPANY, et al. 493

Plaintiff's Exhibit 13.

TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSSTOWN RAILROAD COMPANY.

First Mortgage Five Per Cent. Gold Bonds.

Bondholders Agreement.

494

JOHN W. HAMER, *Chairman*,
925 Chestnut Street,
Philadelphia, Pa.

W. C. HEPPENHEIMER,
A. MERRITT TAYLOR,
HORACE A. DOAN,
CHARLES E. LOXLEY,
Committee.

CENTRAL TRUST COMPANY OF NEW YORK,
Depositary. 495

PARKER, HATCH & SHEEHAN,
ELLIS AMES BALLARD,
Counsel.

496 JOHN W. HAMER, et al. *vs.*

THIS AGREEMENT, made this twenty-second day of July, 1908, by and between such holders of the First Mortgage Five Per Cent. Gold Bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company (which Company is hereinafter called the Crosstown Company) (issued under its mortgage, dated October 1, 1896, to Central Trust Company of New York, as Trustee, who shall become parties hereto as hereinafter provided (hereinafter called Depositing Bondholders), parties of the first part, and JOHN W.
497 HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN and CHARLES E. LOXLEY, and those who may be associated with them and their successors (hereinafter called the Committee), parties of the second part, WITNESSETH:

WHEREAS, by an agreement entered into on September 29, 1896, the Metropolitan Street Railway Company was granted the right to operate cars on the tracks of the Crosstown Company and to collect all fares of passengers riding in such cars, and in return the Metropolitan Street Railway Company agreed to run a sufficient number of
498 cars daily to accommodate the traffic; to pay the principal of the first mortgage five per cent. bonds of the Crosstown Company and also to pay the interest thereon amounting to $75,000. per annum; also to pay all taxes, and to maintain the railroad in good condition and repair; and

WHEREAS, the Receivers of the Metropolitan Street Railway Company allege that the earnings of the Crosstown Company are insufficient to justify the Receivers in any longer continuing to operate cars under the aforesaid agreement of

September 29, 1896, and such Receivers have accordingly been instructed by the United States Circuit Court that at their discretion they may continue to operate the Crosstown Companys lines, but only until October 1, 1908; and

WHEREAS, the Central Trust Company of New York, as Trustee of the first mortgage of the Crosstown Company, has been notified by the Board of Directors of the Crosstown Company that it is not in a position to provide the necessary moneys to continue the operation of the railroad of the Crosstown Company; and 500

WHEREAS, the total principal amount of bonds authorized to be issued under the terms of the said first mortgage of the Crosstown Company, to wit, $1,500,000 have been issued and are now outstanding; and

WHEREAS, it is deemed essential that the holders of said first mortgage bonds of the Crosstown Company take concerted action for the protection and promotion of their common interests;

501

NOW, THEREFORE, in consideration of the premises and of the advantages which will accrue from concert of action, and in consideration of the mutual promises between the Depositing Bondholders, such Depositing Bondholders each for himself and not for any of the others, do agree with each other and with the Committee, as follows:

I.—Any holder of first mortgage bonds of the Crosstown Company desiring to become a party

to this agreement and to avail himself of the services of the Committee, shall on or before August 10, 1908, deposit his bonds with the coupons due October 1, 1908, and all subsequent coupons attached, with the Central Trust Company of New York (hereinafter called the Depositary), which will issue to him a receipt or receipts in substantially the following form, for the aggregate amount of bonds so deposited:

No..... $.....

503

CERTIFICATE OF DEPOSIT.

For First Mortgage Five Per Cent. Gold Bonds of TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSSTOWN RAILROAD COMPANY deposited under an agreement dated July 22, 1908, between the depositing holders of bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, as parties of the first part, and JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN and CHARLES E. LOXLEY, and their Successors, as a Committee, parties of the second part.

504

CENTRAL TRUST COMPANY OF NEW YORK

hereby certifies that it has received as Depositary, from thousand Dollars principal amount of First Mortgage Five Per cent. Gold Bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company with October 1, 1908, and subsequent coupons attached, which bonds and coupons are deposited in trust subject to all the terms and

conditions of the above-mentioned agreement; and the holder hereof assents to and is bound by the provisions of the said agreement by receiving this certificate.

The interest represented by this certificate is assignable by transfer upon the books kept by Central Trust Company of New York for that purpose, by the holder hereof, in person or by attorney, upon surrender of this certificate, properly endorsed.

Dated, New York, 506

CENTRAL TRUST COMPANY OF NEW YORK,
By
Vice-President.
Assistant Secretary.

(On reverse side.)

FOR VALUE RECEIVED, I, the undersigned, hereby assign and transfer unto
,the interest represented by the within Certificate of Deposit and do hereby constitute and appoint
my true and lawful attorney irrevocable for me, to transfer the same on the books of Central Trust Company of New York, kept for that purpose, with full power of substitution in the premises. 507

Dated, , 1908.

.....

In presence of

.....

II.—Such deposit and acceptance of such receipt shall be deemed an acceptance and execution of this agreement on behalf of the bondholder with like force and effect as if he had subscribed hereto, and shall vest in the Committee as Trustee of an express trust, full legal title to the said bonds so deposited with full power of ownership and disposition over the same, except as in this agreement expressly restricted.

Said certificates shall be assignable in the same manner as shares of stock are assignable upon
509 endorsement and surrender of the same to the Depositary, and a new certificate of like tenor and effect shall be issued to such transferee, who shall be deemed a Depositing Bondholder hereunder and fully bound by all the terms and provisions hereof.

III.—All bonds deposited shall be held and delivered at the order, and shall be under the control of the Committee. The Depositary may, upon request of the Committee, appoint agents to accept the deposit of any of the first mortgage bonds and coupons in its behalf, and, under its direction, to assist it in the performance of any other duties
510 imposed upon the Depositary either by this agreement or by the Committee.

IV.—The Depositary shall not incur any liability for anything done or permitted to be done at the request or direction of the Committee nor shall the Depository incur any liability whatsoever except for its own wilful misconduct, for any loss or liability of the Depositary or Committee caused other than by bad faith, shall be conclusively

deemed to be a part of the expenses of the Depositary or of the Committee, as the case may be, herein provided for. The members of the Committee shall not be personally bound to carry this agreement into effect but shall be required to do only what in their judgment seems advisable for that purpose.

V.—The Depositing Bondholders, in addition to vesting in the Committee the full and absolute title to the bonds and coupons deposited hereunder, hereby further constitute and appoint the 512
said Committee their attorneys in fact, and hereby authorize and empower the said Committee in the name of the Depositing Bondholders, in the name of the Committee, or in the name of any other person or persons, as the Committee may deem proper, to institute or take, or cause to be instituted or taken, such actions or proceedings in law or in equity, or otherwise, and to intervene in such suits and proceedings and to give such directions, execute such papers, authorizations, consents, powers of attorney, requests to the Central Trust Company of New York as Trustee under said mortgage, or other instrument, as will, 513
in the judgment of the Committee, protect or advance the interests of the Depositing Bondholders, or result in the payment of the interest on the said bonds, or the payment of the principal of the same and the interest thereon. Full power is hereby given to the Committee to substitute, or to revoke any or all of such powers of attorney or other instruments which they may execute, to discontinue, compromise or settle, any or all such actions or proceedings, to institute others, and to discontinue, settle or compromise the same; to ap-

ply for receivers or for the removal of receivers; and to collect any and all moneys which are or may be due and payable to said Depositing Bondholders as holders of the bonds and coupons deposited hereunder; and said Depositing Bondholders further grant unto the Committee full power and authority to perform every act necessary to be done in the premises, as fully to all intents and purposes as the Depositing Bondholders might or could do if personally present, hereby ratifying and confirming all that the Com-
515 mittee or its appointees or substitutes shall lawfully do by virtue hereof, including the power to vote on all questions that may come up at any meeting of the holders of the said bonds.

The Committee shall possess and may exercise each and every right, power and privilege, conferred upon the Depositing Bondholders under the said first mortgage securing the bonds deposited hereunder, and shall represent the Depositing Bondholders in respect thereof as fully as such Depositing Bondholders could personally act. Said Committee shall have all right and power conferred by said mortgage upon the Depositing
516 Bondholders to declare due and payable the principal of the bonds issued under said mortgage or any part thereof, and the right and power to demand, collect and receive all amounts that may be due or owing upon or in respect to the deposited first mortgage bonds, and whether for principal or for interest; to remove or concur in the removal or resignation of any trustee under the first mortgage, and to appoint or concur in the appointment of any new trustee under the first mortgage; to institute or cause to be insti-

tuted, or to intervene in, any and all suits or proceedings in law, equity or otherwise, which, on advice of counsel, may be deemed necessary or proper to secure a sale or conveyance of the property covered by said mortgage, or in which in the judgment of the Committee the holders of the first mortgage bonds are or may be interested; to operate the railroad pending such sale and for such longer period as the Committee may deem necessary or desirable; to enforce the rights of the Depositing Bondholders and protect their interests in any way that the Committee may deem 518
necessary or advisable, including the right to apply for and procure the appointment of receivers or for the removal of receivers; to request and move the Trustee under said mortgage to exercise the powers conferred upon such Trustee, if in the judgment of the Committee such action be necessary or desirable, or in the discretion of the Committee to request such Trustee to set in motion or suspend any provision of said mortgage; to give and procure, or cause to be given and procured, the necessary indemnity to such Trustee requisite to move such Trustee as aforesaid under the provisions of the mortgage; to investigate the physi- 519
cal and financial conditions of the Crosstown Company, and the accounts and affairs thereof, including the legal status of the said company, its indebtedness, contracts, litigations and legal concerns of every nature and to recommend and endeavor to secure any action which the Committee may deem conducive to the best interests of the Depositing Bondholders.

The Committee may, if it deem it expedient, institute such action or proceeding as it deems best upon or in respect of the guaranty of the

Metropolitan Street Railway Company endorsed upon the first mortgage bonds of the Crosstown Company; and it may compromise or release such guaranty or any liability thereunder.

VI.—In case of a sale of the mortgaged premises under the said first mortgage (whether by judicial decree or otherwise), or subject to the lien of the first mortgage or otherwise, the said Committee shall be and is hereby authorized and empowered in its discretion, but is not obligated,
521 to purchase the same for the account and benefit of the Depositing Bondholders at such price as said Committee may consider judicious (not, however, exceeding the aggregate amount of the principal and interest at the time being due or unpaid upon all of the bonds secured by the said mortgage and the costs and expenses of foreclosure, and all other expenses); to make any arrangement that may be necessary to accomplish such purchase and to use the deposited bonds and coupons in making payment, or in part payment, of the purchase price thereof; and to pledge or charge the purchased property or the deposited
522 bonds and coupons for the purpose of procuring funds to make any such payment, or to obtain such moneys as may be necessary to discharge, in whole or in part, prior liens on the property purchased, or to pay any expenses of sale, or for such other purposes as are herein authorized.

If the said Committee shall purchase the mortgaged premises, as hereinbefore authorized, the same may be conveyed to it, or its nominee, and it, or its nominee, may take possession of the same for the account and benefit of the Depositing Bondholders, according to the amount of said

bonds then held by said Depositing Bondholders respectively. The Committee may deal with the property, or any part thereof at any time purchased or acquired by it or in its behalf, in like manner as it is by this agreement authorized to deal with the deposited bonds, and may cause to be organized a company to which said property may be conveyed; which company may issue such stock, and such bonds secured by deed of trust, or stock alone, as the Committee may deem proper, and after having fully provided for the payment of all court costs, expenses and compensation of 524
the Committee, taxes and charges then due and payable, the Committee may divide the remaining securities among the Depositing Bondholders or their assigns, *pro rata*, according to their respective interests.

VII.—The Committee is also authorized and empowered, if in the judgment of the Committee such action is advisable, either before or after a sale of the mortgaged premises and a purchase thereof for or on account of the Committee, to prepare and adopt a plan, or to approve a plan prepared by others, for the reorganization of the 525
affairs of the Crosstown Company, and to negotiate with all or any of the bondholders, creditors or stockholders of said Crosstown Company in devising and carrying out such plan or plans on the part of the Depositing Bondholders, unless their dissent be manifest as hereinafter indicated. And the Committee may in any such plan in its discretion make provision for any or all of the debts of the Crosstown Company whether or not the same constitute liens on the mortgaged premises superior to the lien of said mortgage and may

also make provision for the stock of the Crosstown Company. Said plan shall be in such form and contain such terms and conditions as to the Committee shall seem equitable and fair. Such plan may include the appointment of Trustees to hold and vote upon the stock or such part of the stock of such reorganized corporation upon such terms and for such time as to said Committee may seem proper. Such plan or agreement may provide for the sale of the deposited bonds at such price or for such consideration as the Committee
527 may deem advantageous to the Depositing Bondholders or the resale of the mortgaged premises in whole or in part on such terms as may seem proper to the Committee; and for the purchase of all or any of the property of the Crosstown Company at any foreclosure or other sale; for the acquisition of other property which in the opinion of the Committee may be advantageous for the preservation, improvement, development or protection of the property covered by the mortgage; for the organization of such corporation as may be suitable and for the acquisition in any manner by such corporation of such property; for the
528 issue, disposition and distribution of all or any of the stock or bonds of the new corporation; and for the raising of any sums in cash deemed necessary by the Committee in its uncontrolled discretion for any of the purposes of the reorganization or the reorganized corporation. When the Committee shall have adopted such plan a copy of the same shall be filed with the Central Trust Company of New York, at its office at No. 54 Wall Street, in the City of New York, and notice of such filing of the said plan shall thereupon be

mailed by the Committee to the Depositing Bondholders at their post-office address as filed with the Depositary or with the Committee, and such filing of said plan and mailing of notice shall be conclusive notice to all Depositing Bondholders and transferees of Certificates of Deposit of the adoption of said plan by said Committee. Such plan shall become operative and binding upon all the Depositing Bondholders unless within 20 days after the mailing of such notice Depositing Bondholders holding one-third in amount of deposited bonds shall file with the Depositary written dissent from said plan. If by reason of such dissent to the extent of one-third in amount of deposited bonds, such plan shall not become effective, the Committee may thereafter from time to time prepare or adopt or approve any other plan or agreement and give notice thereof as above provided and any plan or agreement when not dissented from in manner above provided by Depositing Bondholders holding certificates of deposit aggregating one-third in amount of the bonds deposited hereunder shall be effective and binding on all Depositing Bondholders.

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VIII.—The Committee shall have full power to determine when sufficient deposits of bonds have been made hereunder to warrant it in declaring this agreement to be operative, and shall give notice of such determination in such manner as it may deem proper.

The Committee may limit or extend the time within which, and fix the conditions under which, deposits may be made under this agreement, and may impose penalties in respect to deposits received after such limit shall have expired, and

either generally or in special instances, may, in its discretion, accept deposits after the time limit has expired, and shall have full power to decide upon the plan and the methods to be adopted to carry into effect the general purposes of this agreement.

The Committee may construe this agreement, and its construction thereof or action thereunder in good faith shall be final and conclusive. It may supply any defect or omission or reconcile any inconsistencies in such manner and to such
533 extent as shall be deemed by it necessary or advisable to carry out the general purposes of this agreement. The enumeration of specific powers hereby given to the Committee shall not be construed to limit or restrict the general powers herein conferred or intended so to be, and it is distinctly declared that it is the intention to confer upon the Committee in respect of all bonds and coupons deposited or to be deposited, and in all other respects, all powers which the Committee may deem necessary or expedient in or towards carrying out or performing the general purposes hereof in any respect, even though such
534 power be apparently of a character not now contemplated. The methods and details to be adopted shall be entirely discretionary with the Committee.

IX.—All notices of the Committee shall be in writing, mailed or delivered to the Post Office address of each member of the Committee, or by telegraph or by telephone to the member personally. Any member of the Committee may by written appointment empower another person (who may be a member of the Committee) to vote and act

as his proxy with all the powers of the member making the appointment; and a majority of the members of the Committee as at any time constituted shall constitute a quorum; but no action shall be taken except with the consent of a majority of the whole Committee given in person or by proxy at a meeting, or in writing without a meeting, and such action of the majority shall constitute the action of the Committee, and shall have the same effect as if assented to by the whole Committee. It may make from time to time and alter and rescind such rules and regulations for 536
the conduct of its business as may seem advisable. Any member of the Committee may resign by giving notice in writing to the Chairman or Secretary thereof, and the Committee may settle any account or transaction with such member and give a full release and discharge upon any such resignation; and the Committee may add to its number. It may, but need not, fill all vacancies occurring in the Committee by death, resignation or otherwise, and all substituted or additional members so appointed shall possess and exercise all the powers and duties herein conferred upon the original members as fully in every respect 537
as if they had been originally named as parties hereto. The Committee may create and provide for all necessary trusts and may nominate and appoint Trustee thereunder. The present or future members of the Committee, or the Trust Company Depositary hereunder, may be or become pecuniarily interested in any of the property or matters which are the subject of this agreement, including the right to become members of any syndicate formed in connection therewith, and they

or any of them may become officers or directors, or stockholders or employees of any corporation which may hereafter be organized in connection therewith, or otherwise.

X.—The Committee may appoint and discharge such counsel, attorneys, engineers, accountants, agents and employees as it may see fit, upon such terms as the Committee shall agree upon with such counsel, attorneys, engineers, accountants, agents and employees. No member of the Com-
539 mittee shall be pecuniarily liable, nor liable for any acts or defaults of any other member, nor of any agent or employee, nor for anything but his own wilful misconduct. Nor shall said Committee nor any of its members be liable for any failure to exercise any of the powers hereby granted. The Committee shall keep books of account and its receipts and disbursements, and a record of its proceedings, and upon the termination of its duties, its accounts, including its accounts of its actual expenses and disbursements, shall be filed with the Central Trust Company of New York, and notice of such filing shall be mailed to such of the Depositing Bondholders as shall have given
540 their post office address to the Depositary, and thereupon the Committee and each member thereof shall be discharged from all its and their duties, liabilities and obligations as to all Depositing Bondholders except as to any depositing bondholder who may within thirty days after the mailing of said notice file notice of objection in writing with said Central Trust Company of New York, and commence within said time legal proceedings impeaching the correctness of such ac-

counts. The members of the Committee shall be entitled to reasonable compensation for their services, and to be reimbursed their disbursements and expenses hereunder, and any plan and agreement of reorganization or readjustment which the Committee may adopt or approve, as herein provided, may make provision for the payment of such compensation and of the expenses of the Committee, and may charge with such payment and with the payment of the costs and expenses of such foreclosure proceedings and of such reorganization, the bonds and coupons deposited 542
hereunder or the securities and stock becoming subject to such plan and agreement.

XI.—The expenses and obligations which the Committee is authorized to incur up to and including the expenses of the promulgation of a plan for the reorganization or operation of the Railroad, shall not exceed 3% upon the par value of the bonds deposited hereunder, for which amount the Committee shall have a lien upon the bonds deposited, and it may pledge the same for the purpose of borrowing such amount. But while the Committee shall have power in its dis- 543
cretion to accept the transfer to it of the legal title to the whole or any part of the capital stock of the Crosstown Company, and to exercise all the powers resulting from such ownership; to enter into any agreements or to take any other action which it shall deem necessary in order to insure the continuance of the operation of the Crosstown Companys railroad; the holding and maintenance of its property; the prevention of the forfeiture of its franchise; the rehabilitation, improvement, extension or betterment of its prop-

erty, and the purchase or lease of any property, rolling stock or equipment needed for the operation of such railroad, it shall, nvertheless, have no power to bind depositing bondholders for any obligation or expense in any such matter or in any other matter over and above the 3% limit already named, unless written assent thereto shall be obtained and filed with the Depositary from Depositing Bondholders representing in value two-thirds of the deposited bonds. But in case such assent is received and the Committee in its
545 discretion deem it necessary or expedient to incur further obligation on behalf of the bondholders, then the deposited bonds may be pledged for the purpose of raising or securing the funds necessary therefor, and thereafter in case of the abandonment of any plan of reorganization or operation or of proceedings hereunder, the Depositing Bondholders shall be entitled to receive back their bonds only upon payment of their *pro rata* share of such expenditure.

All directions or instructions given by the Committee to, or powers conferred by the Committee upon, or acts done by, the said Trust Com-
546 pany hereunder shall be binding upon the Depositing Bondholders, notwithstanding the termination of this agreement or the abandonment or modification hereof, or the return of the securities. The Depositary may accept without further proof all statements lodged with it by the Committee and act thereon, and shall be protected in all actions taken by it in pursuance of instructions of the Committee.

XII.—The Committee shall have power, whenever it may deem proper, to abandon this agree-

ment and any plan provided for hereunder, and the bonds and coupons deposited hereunder may thereupon be returned to the holders of certificates of deposit therefor, upon the return of such certificates of deposit to the Depositary, and upon the payment to the Depositary for the account of the Committee, of such holders *pro rata* share of all the expenses incurred by the Committee, including the Committee's own compensation, subject to any existing pledge thereof theretofore made by and under the Committee by the authority of this agreement, and subject to any use which 548
the Committee may have theretofore made of such bonds and coupons in the course of foreclosure or reorganization.

XIII.—An affidavit made before a notary public by the Secretary of the Committee, or any agent or employee of said Secretary, of the mailing of the notices herein provided for, shall be conclusive of his acts and of the giving of such notices.

XIV.—This agreement shall bind and benefit the executors, administrators, successors and assigns of the parties hereto. This agreement may 549
be duplicated and all copies thereof, though separately signed, shall be deemed and taken together as constituting one original agreement.

IN WITNESS WHEREOF, the members of the Committee have subscribed this agreement the day and year first above written, and the parties of the first part have deposited their first mortgage

bonds and coupons and have accepted certificates of deposit therefor.

JOHN W. HAMER,
W. C. HEPPENHEIMER,
A. MERRITT TAYLOR,
HORACE A. DOAN,
CHARLES E. LOXLEY,
Committee.

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551 **Plaintiff's Exhibit 14.**

LIST OF DEPOSITORS 28TH AND 29TH STREETS CROSSTOWN R. R. CO. 1ST MORTGAGE BONDS.

Werner & Brown, 37 New St., N. Y.	$1,000
Estate of Julia E. Ayerigg c/o W. F. Gaston, Executor, Passaic, N. J.	1,000
Henry S. Drayton, 70 Brinckerhoff St., Jersey City, N. J.	1,000
John K. Martin, Bridgeton, Me.	2,000
Chas. S. Hoflmsherd, 29 W. Walnut Ave., Merchantsville, N. J.	3,000
552 F. W. Soule, Passaic, N. J.	3,000
Henry Colt, Trustee, Pittsfield, Mass.	5,000
Estate of Charles Ayerigg, c/o W. F. Gaston, Executor, Passaic, N. J.	5,000
Passaic Trust & Safe Deposit Co., Passaic, N. J.	20,000
Geo. D. Law, 147 Tremont St., Boston,	2,000
Estabrook & Co., 24 Broad St., N. Y.	10,000
Miss Adele E. Flint, 164 Madison Ave., N. Y.	3,000

John Anson, c/o Long Island Loan & Trust Co., Brooklyn,	10,000	
Miss Annie H. Wharton, 2131 DeLancey St., Philadelphia, Pa.	2,000	
Spencer Trask & Co., 43 Exchange Place, N. Y.	10,000	
Trustee of the Estate of George G. Lake, 512 Washington St., N. Y.	30,000	
Passaic Nat Bank, Passaic, N. J.	10,000	
Augustus Floyd, 44 Pine St., N. Y.	8,000	
Charles A. Schieren, 30 Ferry St., N. Y.	5,000	
Estate of Sarah A. Cooke, c/o Paterson		554
Safe Dep. & Trust Co., Paterson, N.J.	3,000	
James Barclay, 2 Rector St., N. Y.	1,000	
First National Bank, Nanticoke, Pa.	5,000	
American Baptist Mission, c/o 1st Nat. Bank, Boston, Mass.	10,000	
Henry A. Hubbell, 339 West Ave., Bridgeport, Conn.	2,000	
Haven C. Perham, Lowell, Mass.	5,000	
Charles F. McKenna, 50 Church St., N. Y.	10,000	
West End Trust Co., 50 Church St., N. Y.	50,000	
Fleitman & Co., 484 Broome St., N. Y.	7,000	
Thomas Buckley, c/o Mechanics & Farmers		555
Bank, Albany, N. Y.	3,000	
Wm. G. Barker, 10 Central St., Boston, Mass.	4,000	
Estabrook & Co., 24 Broad St., N. Y.	28,000	
Mrs. Arabella Tattersfield, c/o Pfaelzer & Co., 433 Chestnut St., Phila.	3,000	
Miss Ellen D. Sharpe, c/o Brown Sharpe Mfg Co., Providence, R. I.	4,000	
Mrs. Louise D. Sharpe Metcalf, c/o Brown Sharpe Mfg. Co., Providence, R. I.	4,000	

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	Mrs. A. S. D. Peters, c/o Brown Sharpe Mfg. Co., Providence, R. I.	3,000
	Wilkes Land Co., c/o Brown Sharpe Mfg. Co., Providence, R. I.	4,000
	Estabrook & Co., 24 Broad St., N. Y.	5,000
	Spencer Trask & Co., 43 Exchange Place, N. Y.	2,000
	Estabrook & Co., 24 Broad St., N. Y.	20,000
	Spencer Trask & Co., 43 Exchange Place, N. Y.	4,000
	Alexander Browler, Worcester, Mass.	5,000
557	Port Richmond Nat. B'k, Port Richmond, S. I., N. Y.	5,000
	E. R. Chapman & Co., 80 B'way, N. Y.	5,000
	Dominick & Dominick, 115 B'way, N. Y.	10,000
	Chas. F. McKenna, 50 Church St.	10,000
	Spencer Trask & Co., 43 Exchange Pl., N. Y.	6,000
	Amoskeag Savings Bank, Manchester, N. H.	25,000
	A. Arthur Leede, 15 Pemberton Sq., Boston, Mass.	2,000
	Sarah F. Coster, Quincy, Mass.	1,000
	Kidder, Peabody & Co., 56 Wall St., N. Y.	19,000
558	Krause Bros. & Co., 24 Broad St., N. Y.	1,000
	Mitchell & Co., Inc., 76 Merrimack St., Haverhill, Mass.	2,000
	Estabrook & Co., 24 Broad St., N. Y.	5,000
	Frank W. Carter, 119 Franklin St., Boston, Mass.	1,000
	David E. Williams, West End Trust Co., Phila., Pa.	10,000
	W. P. Simpson, 1011 Pennsylvania Bldg., Phila., Pa.	12,000
	A. C. Pancroast, c/o W. P. Simpson, same as above	9,000

Spencer Trask & Co., 43 Exchange Pl., N. Y.	50,000	559
Peoples Safe Deposit & Trust Co., Jersey City, N. J.	25,000	
J. S. Bache & Co., 42 B'way, N. Y.	5,000	
John Bowler, Worcester, Mass.	2,000	
Mrs. Mary B. Geyer, Boonton, N. J.	3,000	
Alexander Backus, Box 607, Toledo, Ohio	5,000	
Estabrook & Co., 24 Broad St., N. Y.	10,000	
Mrs. Mary B. Geyer, Boonton, N. J.	7,000	
Hebden, Bob & Moleneux, 64 Wall St., N. Y.	65,000	560
Julius Mantner, 34 E. 10th St., N. Y.	5,000	
Thomas Chamberlain, c/o State Nat. B'k, Boston, Mass.	1,000	
Miss Margaret M. Ingalls, c/o Union Nat. B'k, Troy, N. Y.	4,000	
Stanley F. Cooper, 1826 N. Broad St., Phila., Pa	5,000	
Charles E. Jayne, Stoney Brook, Suffolk Co., N. Y.	2,000	
Willis G. Tucker, Albany Medical College, Albany, N. Y.	1,000	
A. Iselin & Co., 36 Wall St., N. Y.	7,000	
Estabrook & Co., 24 Broad St., N. Y.	3,000	561
W. A. Robinson, Room 1105, 11 B'way, N. Y.	5,000	
Marshall Winchester, Baltimore, Md.	22,000	
Estabrook & Co., 24 Broad St., N. Y.	1,000	
R. L. Day & Co., 39 Wall St., N. Y.	1,000	
Mrs. Georgiana H. Swords, 100 Madison Ave., Morristown, N. J.	6,000	
Hallgarten & Co., 7 Nassau St., N. Y.	16,000	
Ruth H. Wiggin, Room 47, 28 State St., Boston, Mass.	1,000	

	The Baltimore Trust & Guarantee Co., Trustee for the Benefit of Elizabeth Barrenschmidt, Balto., Md.	7,000
	Estabrook & Co., 24 Broad St., N. Y.	2,000
	Mary I. Taylor, Guardian for George D. Taylor, N. C. M., Bath, Me	1,000
	Mary J. Taylor, Bath, Me.	1,000
	Gus Bunzl & Ernest Bunzl, Trustees for J. V. & L. C. Bunzl, International Watch Co., J. City	2,000
563	Gus Bunzl and Ernest Bunzl, Trustees for Richard C. Bunzl, International Watch Co., J. City	6,000
	Estabrook & Co., 24 Broad St., N. Y.	10,000
	George E. Weed, The Engineers' Club, 32 W. 40th St., N. Y.	10,000
	Robinson Female Seminary, Exeter, N. H.	1,000
	Edwin M. Erland, c/o Nat. B'k, Commerce, N. Y.	4,000
	Evelyn A. Chandler, 44 W. 89th St., N. Y.	2,000
	Henry William Habick, c/o Mass. Breweries Co., 80 Arch St., Boston, Mass.	5,000
	Mrs. Mary A. Ruhl, c/o Mass. Breweries Co., 80 Arch St., Boston, Mass.	5,000
564	Edson K. Upton, Hancock, N. H.	3,000
	Salem Nat. Bank, Salem, Mass.	2,000
	Thomas Denny, 30 Pine St., N. Y.	2,000
	Thomas S. Blankly, 113 Lefferts Place, Brooklyn, N. Y.	2,000
	Metropolitan Trust Co., 51 Wall St., N. Y.	2,000
	The Employers Indemnity Co., Phila, Pa.	5,000
	Peabody Institute in Peabody, Mass	5,000
	Estabrook & Co., 24 Broad St., N. Y.	2,000
	Herbert Magoun, 53 Tremont St., Boston, Mass.	3,000

Estabrook & Co., 24 Broad St., N. Y.	53,000	
H. P. Parker, 25 Broad St., N. Y.	16,000	
Jno. A. Tweedy, 179 Joralemon St., B'klyn	4,000	
Louis Kahn, 175 Broadway, N. Y.	5,000	
Estabrook & Co., 24 Broad St., N. Y.	1,000	
Mrs. Sarah J. Jones, c/o F. H. Hazard, 65 Arcade, Utica, N. Y.	5,000	
Wm. T. Lee, 99 Commonwealth Ave., Boston, Mass.	1,000	
Wm. I. Spicer, Noank, Conn.	6,000	
Louise B. Field, Greenfield, Mass.	1,000	566
R. L. Day & Co., 37 Wall St., N. Y.	24,000	
F. V. Carney, 269 Commercial St., Portland, Me.	6,000	
William F. Keep, 112 West Adams St., Chicago, Ill.	4,000	
M. & H. Clarkson, 44 Wall St., N. Y.	2,000	
J. S. Bache & Co., 42 B'way, N. Y.	5,000	
Millett, Roe & Hagen, 3 Broad St., N. Y.	7,000	
Speyer & Co., 24 Pine St., N. Y.	5,000	
Chas. B. Alexander, 165 B'way, N. Y.	6,000	
Clifford Seasongood, 32 Nassau St., N. Y.	5,000	
Farmers Loan & Trust Co., 22 William St., N. Y.	40,000	567
Yale University, New Haven, Conn.	10,000	
Newburger, Henderson & Loeb, 100 B'way, N. Y.	2,000	
The Penn. Mutual Life Ins. Co., Phila., Co.	100,000	
Henry W. Bartol, Executor of Emma J. Bartol, dec'd, c/o Land Title & Trust Co., Phila., Pa.	4,000	

	Henry W. Bartol, Ellis D. Williams and The Land Title & Trust Co., Ttee. u/w of B. H. Bartol, dec'd, for Emma J. Bartol, Ellen K. Bazier, Sita B. Regester and Henry W. Bartol, c/o Land Title & Trust Co., Phila., Pa.	17,000
	W. H. Francis, Hotel Bellevue-Stratford, Phila., Pa.	2,000
	George E. Bartol, c/o J. W. Sparks & Co., Chestnut & 3rd Sts., Phila., Pa.	7,000
	George F. Secour & Co., 33 Wall St., N.	
569	Y.	1,000
	George A. Peabody, George A. Gardner, George P Gardner, William C. Endicott, as Trustees under the will of George Peabody of Salem, 71 Ames Bldg., Boston, Mass.	50,000
	Helen F. Massey, c/o Girard Trust Co., Phila.	4,000
	R. E. Gallaher, 118 Liberty St., N. Y.	3,000
	Mrs. Mary B. Hayes, c/o Hy. T. Richardson, 18 Tremont St., Boston, Mass.	5,000
	Harriet M. P. Massey, c/o Gerard Trust Co., Phila.	1,000
570	Helen F. Massey, c/o Gerard Trust Co., Phila.	2,000
	Harriet M. P. Massey, c/o Gerard Trust Co., Phila.	1,000
	Helen F. Massey, c/o Gerard Trust Co., Phila.	1,000
	Harriet M. P. Massey and Helen F. Massey, c/o Gerard Trust Co., Phila.	1,000
	Geo. J. Geer, 100 5th Ave., N. Y.	1,000

Benjamin Ogden Loxley and Edwin Herbert Lewis, Trustees under the last Will & Testament of Lizzie Jones Taylor, deceased, c/o B. F. Langworthy, 1308 Tribune Bldg., Chicago, Ill.	2,000	
Augustus B. Field, c/o Cravath, Henderson & de Gersdorff, 52 William St., N. Y.	2,000	
E. P. Tysen, 12 Washington St., N. Y.	4,000	
Edwin K. Scheftel, 42 B'way, N. Y.	5,000	
Halle & Stieglitz, 30 Broad St., N. Y.	20,000	
Corn Exchange Bank, 15 William St., N. Y.	24,000	572
Edwin L. Meyers, c/o E. G. Kremer, 1 Wall St., N. Y.	10,000	
Henry Veith, c/o E. G. Kremer, 1 Wall St., N. Y.	5,000	
Hallgarten & Co., 5 Nassau St., N. Y.	6,000	
Charles A. Frank & Co., 45 B'way, N. Y.	5,000	
Charles L. Tiffany, Robert Thorne & Winthrop E. Dwight, Trustees under Trust Agreement with Annie O. Mitchell dated May 24, 1911, c/o Astor Trust Co., N. Y.	10,000	
The Farmers Loan & Trust Co. & Margaret I. Chisholm, Trustees under the Last Will and Testament of Margaret L. Ingalls, dec'd, 22 William St., N. Y.	2,000	573
Day & Heaton, 80 B'way	10,000	
John Bauernschmidt, c/o Hinkley, Hickey & Burger, 215 N. Charles St., Balt., Md.	1,000	
Frederick Bauernschmidt, c/o Hinkley, Hickey & Burger, 215 N. Charles St., Balt., Md.	1,000	

	William Bauernschmidt, c/o Hinkley, Hickey & Burger, 215 N. Charles St., Balt., Md.	1,000
	Sarah Bauernschmidt, c/o Hinkley, Hickey & Burger, 215 N. Charles St., Balt., Md.	1,000
	The Safe Deposit & Trust Co., of Balt., Trustee for Lizzie Bauernschmidt, c/o Hinkley, Hickey & Burger, 215 N. Charles St., Balt., Md.	1,000
575	The Safe Deposit & Trust Co., of Balt., Trustee for Henry Weller and Margaret Elizabeth Weler, c/o Hinkley, Hickey & Burger, 215 N. Charles St., Balt., Md.	1,000
	Halle & Stieglitz, 30 Broad St.	5,000
	Charles T. Mathews, c/o Wm. M. Martin, 50 Pine St.	5,000
	Harold C. Mathews, c/o Wm. M. Martin, 50 Pine St.	5,000
	Florence C. Martin, c/o Wm. M. Martin, 50 Pine St.	1,000
	Edith C. Mossman, c/o Wm. M. Martin, 50 Pine St.	1,000
576	Drelincourt M. Martin, c/o Wm. M. Martin, 50 Pine St.	1,000
	Estate of Rebecca T. Mathews, c/o Wm. M. Martin, 50 Pine St.	2,000
	Florence Mathews, c/o Wm. M. Martin, 50 Pine St.	5,000
	Moses Michaelis, 81 Murray St., N. Y.	5,000
	Nichols Macdonald & Scheider, 60 B'way, N. Y.	7,000
	Martha M. Brosher, 58 7th Ave., B'klyn	10,000

J. Henry Dick & J. Adolph Mollenhance, Executors of Estate of Wm. Dick, 84 B'way, B'klyn, N. Y.	4,000	
Bridgeport Hospital, Bridgeport, Conn.	1,000	
Safe Deposit & Trust Co., of Balt., Md., Trustee u/w of George A. Zell for Henry S. Zell, c/o Safe D. & T. Co., Balt., Md.	3,000	
Safe Deposit & Trust Co., of Balt., Md., Trustee u/w of George A. Zell for James A. Zell, c/o Safe D. & T. Co., Balt., Md.	3,000	578
Safe Deposit & Trust Co., of Balt., Md., Trustee u/w of George A. Zell for Maria Virginia Crane's children, c/o Safe D. & T. Co., Balt., Md.	2,000	
Safe Deposit & Trust Co., of Balt., Md., Trustee u/w of George A. Zell for Robert R. Zell, c/o Safe D. & T. Co., Balt., Md.	2,000	
Laura Drake Smith, c/o S. Hanford, 41 Wall St., N. Y.	2,000	
Henrietta Drake Smith, c/o S. Hanford, 41 Wall St., N. Y.	1,000	
Estate of B. Drake Smith, c/o S. Hanford, 41 Wall St., N. Y.	1,000	579
Emily T. Falkenau, 30 E. 42d St.	1,000	
Otto M. Eidlitz, 30 E. 42d St.	1,000	
Robert J. Eidlitz, 30 E. 42d St.	1,000	
Ernest F. Eidlitz, 30 E. 42d St.	1,000	
Charles L. Eidlitz, 30 E. 42d St.	1,000	
Leslie M. McCrum	5,000	
Ella J. Gilbert	4,000	
Denny Pomeroy & Co.,	10,000	
	$1,373,000	

Plaintiffs Exhibit 15.

MORTGAGE OF TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSS-TOWN RAILROAD COMPANY.

THIS INDENTURE, made the first day of October, in the year one thousand eight hundred and ninety-six, between TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSSTOWN RAILROAD COMPANY, a street surface railroad corporation organized and
581 existing under the laws of the State of New York (hereinafter styled The Railroad Company), party of the first part, and CENTRAL TRUST COMPANY OF NEW YORK, a corporation organized and existing under the laws of the State of New York (hereinafter styled The Trust Company), party of the second part:

WHEREAS, the Railroad Company is the owner of a certain railroad and of the right, privilege and franchises of constructing, operating and maintaining a street surface railroad upon certain streets situated in the City and County of New York, and described as follows:
582

"COMMENCING at or near the ferry landing at West Forty-second Street and North River, and running thence on West Forty-second street, with double tracks, to Eleventh Avenue; thence on Eleventh Avenue, with double tracks, to West Thirty-fourth Street; also from West Thirty-fourth Street and North River, on West Thirty-fourth Street, with double tracks, to Tenth Avenue; thence on Tenth Avenue, with double tracks, to West Thirtieth Street; thence on West Thirtieth

Street, with single track and turnout, to Ninth Avenue; thence on Ninth Avenue, with double tracks, to West Twenty-ninth Street, and to West Twenty-eighth Street; thence on West and East Twentyninth Street, and on West and East Twenty-eighth Street, with a single track in each street, to First Avenue; thence on First Avenue, with double tracks, to East Twenty-fourth Street; thence on East Twenty-fourth Street, with double tracks, to Avenue A; thence on Avenue A, with double tracks, to East Twenty-third Street; thence on East Twenty-third Street, with double tracks, 584
to the ferries at East Twenty-third Street and East River; also from East Twenty-eighth Street and First Avenue, on First Avenue, with double tracks, to East Thirty-fourth Street; thence on East Thirty-fourth Street, with double tracks, to the ferry landing at East Thirty-fourth Street and East River, or from First Avenue and East Thirty-third Street, on East Thirty-third Street, and private property, with double tracks, to the last mentioned ferry landing; also from Ninth Avenue and West Twenty-ninth Street, on West Twenty-ninth Street, with a single track, to Tenth Avenue; thence on Tenth 585
Avenue, with double tracks, to West Twenty-eighth Street, or by continuing single track on West Twenty-ninth Street to Eleventh Avenue; and thence on Eleventh Avenue, with single track, to West Twenty-eighth Street; also from Ninth Avenue and West Twenty-eighth Street, on West Twenty-eighth Street, with single track or double tracks, to Eleventh Avenue; thence on Eleventh Avenue, with double tracks, to West Twenty-fourth Street; thence on West Twenty-fourth Street, with double tracks, to Thirteenth Avenue;

thence on Thirteenth Avenue, with double tracks, to West Fourteenth Street and North River, with all necessary switches, turnouts, turntables, connections and stands, for the proper and convenient working of the said road."

WHEREAS, the Railroad Company proposes and has determined that it is expedient to issue and dispose of its bonds for certain sums of money necessarily borrowed for acquiring, completing, equipping or operating its railroad, and for the
587 transaction of its business and for the exercise of its corporate rights, privileges or franchises and for other lawful purposes of its incorporation, not exceeding $1,500,000, and to mortgage its corporate property and franchises to secure the payment of the debts contracted for the purposes aforesaid; such bonds to be 1,500 in number and for the sum of $1,000 each, to bear interest at the rate of five per cent. per annum, to bear date October 1st, A. D. 1896, to be payable October 1st, A. D. 1996, to have interest coupons annexed, to contain a provision for registration, and to be numbere consecutively from 1 to 1,500 inclusively; such bonds to be signed on behalf of the Rail-
588 road Company by its President, to have thereunto affixed its corporate seal attested by its Treasurer, and each coupon to be authenticated by the engraved or lithographed signature of its Treasurer, and said bonds to be substantially of the following form and tenor, that is to say:

(Form of Bond.)

UNITED STATES OF AMERICA.
State of New York.

No. $1,000.

TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSSTOWN RAILROAD COMPANY.

First Mortgage Five Per Cent. Gold Bond.

590

Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, a corporation organized and existing under the laws of the State of New York, United States of America, for value received, promises to pay to Central Trust Company of New York, or bearer, or, if registered, to the registered owner hereof, the sum of one thousand dollars in gold coin of the United States, of the present standard of weight and fineness, at the office or agency of said Railroad Company in the City of New York on the 1st day of October, A. D. 1996; and to pay interest on the said sum, in like gold coin, semi-annually, at the office or 591 agency of said Railroad Company in the Ctiy of New York, at the rate of five per cent. per annum on the first days of April and October in each year on the presentation and surrender of the respective annexed interest coupons.

This bond is one of a series of bonds of like tenor numbered consecutively from 1 to 1,500 inclusive and amounting in the aggregate to $1,500,000, and the payment of the principal and interest of said bonds is equally secured by and according to the terms of a certain trust deed duly

executed, recorded and delivered by said Railroad Company to Central Trust Company of New York, and its successors, as Trustee, bearing date the 1st day of October, A. D. 1896, conveying to said Trustee by way of Mortgage all the property and franchises of said Railroad Company then existing or thereafter to be acquired.

This bond shall pass by delivery unless registered on the books of the said Railroad Company, in the City of New York, in which event, after proper endorsement of registration hereon, only
593 the coupons shall pass by delivery, and the bond itself shall be payable only to the registered holder or his lawful representative, unless or until released from registry at the request of such registered holder.

This bond shall not be obligatory unless authenticated by the certificate of the Trustee of said mortgage endorsed hereon.

IN WITNESS WHEREOF, Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company has caused this bond to be signed by its President and its Treasurer and its corporate seal to be
594 hereto affixed this 1st day of October, A. D. 1896.

TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSSTOWN RAILROAD COMPANY,

By

(Corporate Seal.) President.

Attest:

Treasurer.

(Back of Bond.)

No. $1,000.

TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSSTOWN RAILROAD COMPANY.

First Mortgage Five Per Cent. Gold Bond, dated October 1st, 1896, and due October 1st, 1996. Interest payable April 1st and October 1st, at the agency or office of the Railroad Company in the City of New York. 596

(Trustee's Certificate.)

Central Trust Company of New York, Trustee of the mortgage mentioned in this bond, hereby certifies that this bond is one of the series and issue of bonds described in the said mortgage.

CENTRAL TRUST COMPANY OF NEW YORK,

By

President.

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(Form of Coupon.)

$25. Coupon No.

Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company will pay to the bearer, at its office or agency in the City of New York, twenty-five dollars in gold coin of the United States of America, on the 1st day of ,

being six months' interest on its first mortgage five per cent. gold bond numbered .

Treasurer.

(Registration.)

The blanks below to be written upon only by an authorized officer or Agent of the Railroad Company:

599

Date of Registration.	Name of Registered Owner.	Signature of Transfer Officer or Agent.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, party of the first part, for and in consideration of the premises and of the sum of one dollar to it in hand paid by Central Trust Company of New York, the receipt whereof is hereby acknowledged, and in order to secure equally the payment of the principal and interest of the bonds aforesaid at any time outstanding, doth grant, bargain, sell, alien, remise, release, convey and confirm unto Central Trust Company of New York, party of the second part, and its successors, all and singular its property and franchises of every nature and description whatsoever, whether now owned or hereafter to be acquired; including all its equipment and personalty, and all its lands, buildings and real estate in the City of New York, and elsewhere, and all its railroads, railroad properties, railroad routes and all its franchises, rights and privileges to

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maintain, construct, or operate railroads, and to exact fares thereon, and all its rights, privileges and franchises to use the roads, routes and franchises of other companies;

Including particularly the railroads and franchises hereinbefore specifically described.

Together with privileges, rights and franchises now owned by the Railroad Company or which shall hereafter be owned or acquired by it, and all lands now or hereafter owned or acquired, and all equipment and personal property now owned or hereafter acquired and all 602
railways, depots, or stations and all buildings now erected or which may hereafter be erected for use in connection with said railroad, and all cars, carriages, tools, chattels, machinery and appliances now owned or hereafter to be owned or acquired by the Railroad Company, or in any way belonging or appertaining to the Railroad Company, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, 603
possession, claim and demand whatsoever, as well in law as in equity, of the Railroad Company of, in and to the same, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD the same unto Central Trust Company of New York, party of the second part, and its successors forever; in trust, nevertheless (subject to each and all of the provisions hereinafter in this deed of trust set forth), for the persons, corporations, firms and partnerships,

and for the benefit and security and protection of the persons, corporations, firms and partnerships, who shall from time to time hold the said bonds, and the interest coupons aforesaid, or any or either of them, and for enforcing the payment thereof and the interest due thereon, when payable, in accordance with the true intent and meaning of the stipulations of this instrument and of said bonds and said coupons; provided, however, and these presents are upon the express condition that if the Railroad Company, its successors or assigns, shall well and truly pay, or cause
605 to be paid, unto the holder sof the said bonds so issued, or to be issued as aforesaid, the principal and interest to grow due to them, the said holders respectively, at the times and in the manner mentioned in the said bonds and in the coupons or interest warrants thereto annexed, according to the true intent and meaning thereof, then these presents and the estate hereby granted shall cease, determine and be void, otherwise to be and to remain in full force and virtue.

It is hereby declared and agreed by and between the parties hereto that the bonds of this series shall all at once or from time to time be
606 certified by the Trust Company and delivered to the order of the Railroad Company conformably with any directions that may be given to the Trust Company by resolution of the Board of Directors of the Railroad Company, a certified copy of which resolution shall first be lodged with the Trust Company; but no duty or obligation is imposed upon the Trustee to look behind any such certified copy of such resolution before certifying and delivering bonds in accordance therewith, nor shall the Trust Company be in any wise

responsible or answerable for the issue and negotiation of any of the bonds secured hereunder, and which may be by it certified and delivered in accordance herewith.

And it is further declared and agreed, by and between the parties hereto, that the trusts, uses, purposes, conditions and covenants for and upon which the property hereinbefore described is conveyed to the Trust Company, and is to be held and disposed of by the Trust Company, are as follows, that is to say:

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FIRST: No bonds secured by this Indenture shall be deemed as having been issued, or shall be valid and effectual for any purpose, until the same shall have been signed by the President or a Vice-President of the Railroad Company, and sealed with its corporate seal, attested by its Treasurer, and shall have been certified by the Trustee to be one of the series of bonds described in this Indenture of Mortgage, and the amount of bonds which may be issued by the Railroad Company under and secured by this Indenture and certified by the Trustee is limited to the aggregate principal sum of one million five hundred 609
thousand dollars outstanding at any one time.

All such bonds, issued under and in pursuance of the terms of this Indenture of Mortgage, and at any time outstanding (subject, however, to the terms and conditions of this Indenture), shall be in all respects equally and ratably secured hereby without preference, priority or discrimination on account of or with reference to the actual time or times of the issue of said bonds, or any them, so that all such bonds at any time outstanding shall have the same right, lien and privilege under and

by virtue of this mortgage or deed of trust, and shall all be equally secured hereby with like effect as if they had all been made, executed and delivered and negotiated simultaneously on the date of the recording of this deed of trust, whether the same or any of them shall actually be sold or disposed of at such date, or whether they or any part of them shall be negotiated or sold at some future date.

SECOND: The Railroad Company promises and
611 agrees to pay, from time to time, all taxes, assessments, laborers' and mechanics' liens, and other charges lawfully imposed on the property hereinbefore conveyed, or any part thereof, the lien of which might or could be held to be a lien prior to the lien of this motrgage, so that the priority of this mortgage may be duly preserved, and further covenants that it will not suffer to be done, or permitted, any act, matter or thing whatsoever whereby the lien of this mortgage might or could be impaired, until the bonds hereby secured, with all interest accrued thereon, shall be fully paid and satisfied.

612 Upon default by the Railroad Company in paying any such taxes, assessments or other charges, the Trustee may, if so advised, and without impairment of, or prejudice to, any of its rights under this mortgage by reason of such default, itself pay such taxes, assessments, or other lien or charges, and have a first lien upon the mortgaged premises for its advances for that purpose.

THIRD: In case default shall be made in the payment of any of the interest on any of the aforesaid bonds issued or to be issued hereunder, or in

any requirement herein contained to be done or kept by the Railroad Company, and if such default shall continue for the period of six months, then, upon requisition of the holder of a majority in amount of the bonds then outstanding, it shall be lawful for the Trustee personally, or by its attorneys or agents, to enter into and upon all and singular the mortgaged property and each and every part thereof, and wholly to exclude the Railroad Company and its agents therefrom and to have, hold and use the same, as the Railroad Company could or might do if this indenture had 614
not been made; operating by its managers, superintendents, receivers or servants, or other attorneys or agents the said mortgaged railroads and property, and conducting the business thereof, and exercising the franchises pertaining thereto, and making, from time to time, all repairs and replacements, and such useful alterations, additions and improvements therein and thereto as may seem to be necessary or judicious; and to collect and receive all earnings, tolls, freights, incomes, rents, issues and profits of the same, and every part thereof; and, after deducting the expenses of operation and of conducting the busi- 615
ness of all said repairs, replacements, alterations, additions and improvements, and all payments which may be made for taxes, assessments, charges or liens prior to the lien of this indenture upon the said mortgaged property, or any part thereof, as well as a just compensation for its own services, to apply the money arising as aforesaid to the payment of the interest on the bonds hereby secured, in the order in which such interest shall have become due, ratably to the persons entitled

to such interest; and, if and when, after payment of all interest which shall have become due, a surplus shall remain, such surplus and the mortgaged property shall forthwith be paid and returned to the Railroad Company.

If default shall be made in the payment of all or any part of any installment of the interest hereby secured to be paid, and should the same remain unpaid and in arrears for the space of six months after demand, or should any taxes or assessments upon the said mortgaged premises, or
617 other charges having priority over the lien of this mortgage, remain in arrears for the space of one year after the same shall become due and payable, then and in that event, after the lapse of said periods respectively, the entire principal sum secured by said bonds then outstanding, together with all arrearage of interest thereon, shall forthwith become due and payable, provided a majority in interest of the holders of said bonds shall so elect and certify their said election in writing to the Trustee, or its sucessors, signed by them or their lawful attorneys, and duly acknowleged, even though the time in said bonds limited
618 for the payment thereof shall not then have expired, anything in said bonds contained to the contrary thereof notwithstanding.

Upon the request in writing of the holders of a majority in amount of the bonds hereby secured and then outstanding, upon any such default, and after the lapse of said periods, respectively, it shall be the duty of the Trustee to declare the principal of all said bonds due and to give notice thereof to the Railroad Company, as aforesaid, or to refrain from making such declaration, or to waive any such default in the payment of interest

or other default, except in the payment of the principal of said bonds, or any of them, upon the maturity thereof, upon such terms and conditions as such majority holders shall signify in writing. Such holders may, in like manner, annul or reverse any such declaration already made by the Trustee, anything herein contained to the contrary notwithstanding; provided, however, that the Railroad Company shall not, on the faith of such declaration, have paid said bonds to the holders thereof, or deposited with the Trustee the amount payable thereon. It is expressly understood, how- 620
ever, that the action of the Trustee or of the bondholders, in case of any one default, shall not affect or impair the rights of the Trustee, or of such holders, in respect to any subsequent default on the part of the Railroad Company or impair any rights resulting therefrom.

FOURTH: In case of default in the payment of the principal of the bonds hereby secured to be paid, or any part thereof, and if such default shall continue for sixty days after such payment shall become due either by the maturity of the bonds or by reason of the declaration of the Trustee under 621
the provisions of this mortgage, it shall be the duty of the Trustee and its successors, as hereinafter provided, on the written request of a majority in interest of the holders of such bonds then outstanding, signed by them or their lawful attorneys, and duly acknowledged, with or without entry, to sell the said railroad, together with the real estate, railways, rails, equipment, privileges, rights and franchises owned by the Railroad Company, and all the mortgaged property hereby conveyed, at public auction, in manner to be determined by

the Trustee, and, upon such sale, to deliver to the purchasers thereof, good and sufficient deeds of conveyance for the same in fee simple, which sale shall be a perpetual bar in law and in equity against the Railroad Company, and all persons and corporations lawfully claiming by, through or under it, and for all purposes of the title to be conveyed on such sale, this deed shall be deemed to be an absolute conveyance of the property aforesaid to the Trust Company, and the possession retained by the Railroad Company hereunder shall
623 be deemed to be the possession of the Trust Company as absolute grantee; and upon the making of such sale, the Trustee or its successor shall apply the proceeds arising therefrom as follows, to wit:

1st. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and all expenses, liabilities and advances made or incurred by the Trustee in administering the trusts of this mortgage, and in operating and maintaining the property hereby conveyed, and all
624 taxes, assessments or liens prior to the lien of these presents.

2nd. To the payment of the whole amount of principal and interest which shall then be owing and unpaid upon the said bonds, or any of them, whether said principal by the tenor of said bonds be then due or yet to become due, and, in case of a deficiency of said proceeds to pay in full the whole amount of said principal and interest owing or unpaid upon said bonds, the said proceeds shall be paid ratably in proportion to the amounts

owing and unpaid on said bonds, respectively, and without preference of any one bond, or of interest due thereon, over any of the others.

3rd. To pay over the surplus, if any, to the Railroad Company, its successors or assigns, or as any Court of competent jurisdiction may direct.

The receipt of the Trustee who shall make the sale hereinbefore authorized shall be sufficient discharge to the purchaser or purchasers at such sale, for his or their purchase money, and such purchaser or purchasers, his or their heirs or as- 626
signs or personal representatives, shall not, after paying such purchase money and receiving such receipt of the Trustee, be obliged to see to the application of such purchase money upon or for the purposes of these presents, or be in any wise answerable for any loss, misapplication or non-application of such purchase money by the Trustee.

FIFTH: It shall be the duty of the Trustee and its successors, upon proper indemnification, to execute the power of sale hereby granted, or to take appropriate proceedings at law or in equity to enforce the rights of the Trustee and of the 627
bondholders under these presents upon requisition in manner as follows, to wit:

Such requisition shall be by not less than a majority in interest of the holder of the bonds hereby secured and then outstanding, and shall be by an instrument or concurrent instruments in writing, signed by such bondholders, or by their duly authorized attorney or attorneys in fact; and, upon such requisition and proper indemnification, the Trustee shall proceed forthwith to enforce the

rights of the Trustee and of the bondholders under these presents by a sale, or by judicial proceedings or otherwise, as such requisition shall indicate.

The several remedies in these presents specified are cumulative and not exclusive, one of the other, and shall be in addition to all other remedies to enforce the lien of these presents.

Upon any default in the payment of the principal of interest of any of said bonds when the same shall have become due and payable, the Trus-
629 tee may, and upon request in writing of the holders of the majority in interest of said bonds outstanding, and proper indemnification, the Trustee shall proceed forthwith to enforce and protect the rights of the Trustee and of the bondholders hereunder, according to such requisition; or, in default of request or specific instructions by such majority, by action, suit or other judicial proceedings as it, being advised by counsel learned in the law, shall deem most expedient in the interest of the holders of bonds secured hereby.

All proceedings of the Trustee hereunder in regard to enforcing to any extent the lien created by
630 this mortgage or deed of trust either by taking possession, or by sale at auction, or by resort to judicial proceedings, or by any means authorized or contemplated hereby, shall be at all times subject to the control of the holders of a majority in amount of the bonds issued hereunder and then outstanding, their wishes being expressed in writing to said Trustee; and the holders of a majority in amount of said bonds secured hereby and outstanding shall at all times have power, by an instrument in writing, to direct the Trustee to waive any default of the Railroad Company hereunder,

except in the payment of the principal of said bonds, or of any of them, upon the maturity thereof, upon such terms as may be directed by the said majority in said writing; and no action taken by the Trustee or by the bondholders shall prejudice or affect the powers or rights of the Trustee or of the bondholders in the event of any subsequent default.

SIXTH: Upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of the Trustee and of the 632
bondholders under these presents, the Trustee, pending such proceedings, shall be entitled, without further notice, to apply for and secure the appointment of a Receiver of the property hereby mortgaged, and of the income, rents, issues and profits thereof.

SEVENTH: In case of foreclosure and sale under the provisions hereof, the purchasers at such sale shall be entitled, in making settlement for or payment of the purchase money bidden, to pay in toward the payment of such money any of the bonds secured hereby which may be held by such 633
purchasers, counting such bonds and the accrued and unpaid coupons thereon for that purpose at the sum which shall be payable out of the net proceeds of such sale to the holder or holders of such bonds as his or their just share of such proceeds properly applicable thereto; and if such share of the net proceeds shall be less than the amount then due upon such bonds and coupons, to make such settlement by receipting upon such bonds the amount to be paid thereupon.

EIGHTH: The Trustee shall not be under any obligation to take any action towards the execution of this trust, which, in its opinion, may be likely to involve it in any personal expense or liability, unless first indemnified to its satisfaction.

The Trustee may resign or discharge itself of the trust herein created by written notice to the Railroad Company at least three months before such resignation shall take effect, or shorter time as the Railroad Company shall be willing to accept.

635 Two-thirds in interest of the holders of the bonds hereby secured and then outstanding may at any time remove the Trustee from the trust herein created by filing with the Register of the County of New York an instrument, or concurrent instrument, in writing, executed and acknowledged under their hands and seals, or the hands and seals of their duly authorized attorneys in fact.

Whenever a vacancy shall occur in the office of the Trustee hereunder by resignation, removal or otherwise, a majority in interest of the holders of bonds hereby secured and then outstanding shall
636 have the right to appoint a new Trustee or Trustees to fill such vacancy by filing with the Register of the City and County of New York a written instrument or concurrent instruments executed under their hands and seals or the hands and seals of their duly authorized attorneys in fact, and duly acknowledged; in which case upon the filing of said instrument or instruments the Trustee or Trustees so appointed shall without further act or deed or conveyance become the Trustee or Trustees hereunder.

Whenever a vacancy shall occur in the office of the Trustee hereunder aforesaid, and until a majority in interest of the holders of the bonds shall appoint a successor to fill such vacancy in the manner herinbefore prescribed, the Board of Directors of the Railroad Company shall have the right to appoint a successor to fill such vacancy, which appointment shall be attested by the written certificate of the President and Secretary of the said Board of Directors executed in a sufficient number of parts, each of which shall be an original, duly signed, sealed and acknowledged, 638
which certificate shall be filed in the office of the Register of the City and County of New York.

The successors of the Trustee so appointed by the Board of Directors of the Railroad Company shall continue to be the Trustee hereunder until a majority in interest of the holders of the said bonds hereby secured and then outstanding shall appoint a new Trustee or Trustees to act hereunder by filing with the said Register of the City and County of New York a written instrument or concurrent instruments executed and acknowledged under their hands and seals or the hands and seals of their duly authorized attorneys in 639
fact, in which case, upon the filing of such instrument or instruments, the Trustee or Trustees so appointed shall without further act or deed or conveyance become the Trustee or Trustees hereunder. An appointment made in the manner hereinbefore prescribed by or on behalf of a majority in interest of the holders of the said bonds then outstanding shall supersede any appointment to fill the vacancy theretofore made in any other manner whatsoever, and any Trustee or Trustees appointed to fill any such vacancy or to succeed

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any Trustee or Trustees hereunder, shall be vested with and subject to all the right, title, interest and estate, powers, duties and trusts herein conveyed and contained, as if originally named in this instrument; provided that, with the instrument or instruments of appointment a written acceptance, signed and duly acknowledged by the New Trustee or Trustees, shall be filed or recorded in the office of the said Register.

NINTH: No act or resolution of any meeting of
641 bondholders or of the Trustee or Trustees hereunder, nor any act or election of or instrument executed by a majority in interest of all such bondholders, shall impair, control or affect the rights, interests or remedies, legal or equitable, of any non-assenting bondholder, except in the particulars and to the extent to which the same is made expressly controlling by the provisions contained in this instrument.

TENTH: It is expressly declared to be a condition upon which the Trustee assents to these presents and accepts the hereby created trust that the
642 Trustee shall not in any manner be held responsible for persons employed by it in the furtherance of this trust, if selected with reasonable care, nor shall the Trustee or its successors be answerable, except for its or their wilful default, and in all cases after default, as is hereinafter provided, the Trustee and its successors shall be authorized to pay reasonable compensation out of the trust estate to such person or persons as they may employ in the administration or management of this trust, and the Trustee or its successors shall, after such default as aforesaid, be entitled to just compensa-

tion for all services rendered by it or them in connection with such trust, which shall be paid by the Railroad Company or out of the trust estate. The recitals of fact herein contained, and contained in the bonds hereby secured, shall be taken as statements of the Railroad Company, and shall not be construed as made by the Trustee. The Trustee shall be under no obligation to file, register or record this instrument, provided it be recorded by the mortgagor as a mortgage of real estate against the lands herein specifically described.

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ELEVENTH: The several covenants, promises and agreements by the Railroad Company herein contained, shall be binding as well upon its successors and assigns.

For the debt and bonds secured hereby, the Railroad Company is liable *in personam*, and any deficiency, after exhausting the mortgage security, may be enforced against the Railroad Company, but not against its Directors or stockholders individually, and it is expressly agreed between the parties hereto and by every person who shall take or hold any bond or bonds issued hereunder, that the existing and all future Directors and stockholders of the Railroad Company shall not be individually liable to any extent or for any purpose with respect to said bonds or any of them.

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TWELFTH: The Railroad Company hereby covenants and agrees with the Trust Company to keep insured to an amount satisfactory to the Trust Company the buildings, cars, carriages, tools, machinery and equipment so long as this lien hereby created, or any part thereof, is in full

force and effect; and, until the full payment of the said bonds and interest due thereon, the loss, if any, shall be payable to the Trustee, and the policies representing such insurance shall be delivered to the Trustee; but the Trustee shall be under no obligation to effect any insurance upon the mortgaged premises unless provided with funds sufficient therefor.

In case of loss before default on the part of the Railroad Company of any of the premises, covenants or undertakings herein set forth, the
647 money received by the Trustee from the Insurance Companies shall, at the written request of the Railroad Company, be disbursed by the Trustee in payment of expenses of repairing, rebuilding and replacing, subject to the lien of this mortgage, the property burned or damaged by fire.

THIRTEENTH: This mortgage is made to secure, upon the terms and conditions herein set forth, the payment of the bonds aforesaid, and specified herein, amounting to one million five hundred thousand dollars, to be issued as aforesaid.

FOURTEENTH: Until default on the part of the
648 Railroad Company in the performance of any of the promises, covenants or undertakings herein set forth, and the lapse respectively of the periods specified in Article Third, or until a Receiver of the mortgaged property shall have been appointed, as provided in Article Sixth, the said party of the first part shall have the right to remain in possession of all its railroad premises and property hereinbefore granted or hereafter acquired and hereby mortgaged, and shall be suffered and permitted to possess and enjoy the same, and the

earnings, income and profits thereof. The Railroad Company shall, at all times, and from time to time, until default as aforesaid, have full power of management and control of the said railroads and the mortgaged property, with the right to change the motive power, and in its discretion, when duly authorized by law, to substitute such motive power as in its judgment shall be for the interest of the property; and, until default as aforesaid, the Railroad Company shall have full power to sell and dispose of any real estate or other property which in its judgment has become 650
unnecessary for the purposes of the railroad. But the substituted motive power, and the plant connected therewith, shall become subject to the lien of this mortgage, and no real estate shall be sold unless the then market value thereof shall first have been appraised by an appraiser appointed by the Trustee, and unless an amount equal to such appraised value or other property of equal or greater value acquired by the Railroad Company in its discretion shall be deposited with the Trustee or made subject to the lien of this mortgage.

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FIFTEENTH: Until default as aforesaid the Railroad Company shall at any time, and from time to time, be permitted to alter, remove, sell or dispose of any buildings, fixtures, machinery or other appliances upon the mortgaged premises which, in its opinion, cannot be advantageously used in the judicious operation and management of its business; and on the request of the Railroad Company, the Trust Company shall convey by way of release or otherwise to the persons designated by the Railroad Company, any such prop-

erty or any property which by the preceding Article the Railroad Company has power to sell; provided, however, that the Railroad Company shall (and it hereby agrees that in such cases it will) replace any real estate, buildings, fixtures, machinery or other appliances removed, sold or otherwise disposed of by acquiring subject to this mortgage additional real estate, or by placing upon the mortgaged property, subject to this mortgage, other buildings, fixtures, machinery or appliances equal in value to the value of the
653 property so removed, sold or otherwise disposed of, or by paying to the Trustee the appraised value of such property at the time of the execution of any such release.

Until default as aforesaid, the Railroad Company may at any time, and from time to time, sell, exchange or otherwise dispose of such materials, rolling stock and other like property as may have become old, worn out, disused, or undesirable or not needed; renewing the same or substituting other property of equal or greater value; the said materials or property thus substituted to be covered by and subject to the lien of this mort-
654 gage; but the Trustee is not and shall not be charged with any duty as to seeing whether such substitutions are so covered.

Any money received by the Trustee as the proceeds of any sale or exchange or other disposition of property under the provisions of this Article, shall, in the discretion of and upon the request of the Railroad Company, be invested by the Trustee, subject to the lien of this mortgage, in real estate, railroads, railroad routes or franchises, materials, rolling stock, buildings, fixtures, machinery or other appliances, or in bonds secured by this mort-

gage, or in bonds, mortgages or securities authorized by law for the investment of trust funds or the funds of savings banks in the State of New York, which bonds, mortgages or securities shall be held for the further security of the bonds issued and to be issued and outstanding hereunder; but, until default in the payment of the principal or interest of the bonds secured hereby, or some part thereof, the rents, profits, interest and income accruing from such investments shall be paid to the Railroad Company, which, until default as aforesaid, shall also have full power to invest, 656
sell and reinvest any and all moneys, property, bonds, mortgages or securities so acquired, provided that no property shall at any time be sold for less than its actual market value at such time, and provided, also, that, if sold, the proceeds shall be deposited with the Trustee or other property of equal or greater value shall be made subject to the lien of this mortgage either by depositing the same with or transferring the same to the Trustee or otherwise, as the Railroad Company in its discretion may determine.

Wherever the provisions of this or of the preceding Article shall require an appraisal of real 657
estate, or of any interest therein, or the ascertainment of the appraised value thereof, such appraisal shall be made, or such appraised value shall be ascertained, by the appraisal of any person appointed or approved in writing by the Trustee.

The sworn statement of the President or Treasurer and Engineer for the time being of the Railroad Company, and a copy of a resolution of the Board of Directors of said Company, certified by its Secretary, may be received by the Trustee as

sufficient and conclusive evidence of any other facts mentioned in this Article, and shall be full protection to the Trustee for any action taken by it on the faith thereof, but the Trustee may in its discretion require such further and additional evidence as to it may seem reasonable.

SIXTEENTH: When and as any of the interest coupons annexed to any of said bonds shall mature and be paid, the same shall forthwith be cancelled; and, upon any sale or any pledge or
659 assignment, as security or otherwise, of any coupons or of any interest separate from the bonds from which such coupons were detached, or upon which such interest shall have accrued, such coupons and interest shall cease to be secured by or entitled to any lien upon the mortgaged premises except subject to the prior payment in full of all the bonds issued hereunder and then outstanding, together with the coupons and interest not so sold, pledged or assigned, it being intended that all coupons or interest purchased or assigned or pledged, separate from the bonds from which said coupons are detached, or on which such interest
660 shall accrue, shall at all times be subordinate in lien to, and shall be paid only after full payment of the bonds then issued hereunder, together with the coupons and interest not so sold, pledged or assigned.

SEVENTEENTH: In case any of the bonds issued hereunder shall become mutilated, it shall be lawful, upon the surrender to the Trust Company of any such bonds, with all unmatured coupons pertaining thereto, for the Railroad Company to issue and the Trust Company to certify, a new bond

with new coupons, attached, bearing the same number, in lieu, substitution or exchange therefor, and the Trust Company shall forthwith destroy and effectually cancel each bond and the coupons so surrendered; and, if any of the bonds, with unmatured coupons attached, issued hereunder, shall become lost or destroyed, it shall be lawful, upon satisfactory proof of such fact to the said Trust Company, and to the Railroad Company, and upon the giving of good and sufficient bonds of indemnity by the owner of such lost or destroyed bond with such coupons attached, to the 662
Railroad Company and the Trust Company severally, for the said Railroad Company to issue, and the Trust Company to certify, new bonds, with like coupons, bearing the same number, in place thereof. The issue of new bonds and coupons in any of the cases aforesaid shall rest solely in the discretion of said Railroad Company and said Trust Company.

EIGHTEENTH: The Railroad Company further covenants with the party of the second part, its successors, and with all persons who shall, at any time, become holders of the said bonds secured 663
hereby, that it and its successors and assigns shall and will, at any and all times, make, do, execute and deliver all such further acts, deeds and assurances in the law as may reasonably be required for effecting the intention of these presents, and for the better assuring and confirming unto the Trustee and its successors the trust hereby created, and all and singular the property, both real and personal, privileges, rights and franchises now owned by the Railroad Company, or which shall hereafter be owned by it.

NINETEENTH: The term or words "Trust Company," "Trustee" or "said Trustee," as used in these presents, shall be held and construed to mean the Trustee, party of the second part, or its successor or successors, and said successor or successors of the Trustee shall have and be possessed of, and shall be competent to exercise all the estate, rights, privileges and powers hereby granted to or conferred upon the party hereto of the second part. The term "The Railroad Company" includes the party of the first part, its successors
665 and assigns.

TWENTIETH: Any request in writing or other instrument required by this Indenture to be signed or executed by the holders of bonds secured hereby, may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such holders in person or by attorney in fact.

Proof of the due execution of any such request or other instrument by the holders of the requisite number of bonds shall be sufficient for the purposes of this Indenture if it shall be made to ap-
666 pear, in the manner hereinafter provided, that the persons so executing such request or other instrument were contemporaneously the holders of the requisite amount of bonds on or after the date of the execution of such request or other instrument by such holders.

The fact and date of the execution by any person of any such request or other instrument may be proved by the certificate of a Notary Public or other officer authorized to take acknowledgments of deeds to be recorded in New York, that the

person signing such request or other instrument acknowledged to him on the date thereof the execution thereof, or by an affidavit of the witness of such execution.

The holding and date of holding of bonds by any person executing any such request or other instrument as the holder of bonds issued hereunder, and the amounts and issue numbers of the bonds held by such person, may be proved by a certificate in writing executed by any depositary approved by the Trustee (such statement being acknowledged by such depositary before an officer authorized to take acknowledgments of deeds to be recorded in New York), showing that such person had on deposit with such depositary the bonds described in such certificate at the date therein mentioned. 668

TWENTY-FIRST: The Trust Company and its successors, in all matters involving active duty or interference with the trust, shall be entitled to suitable indemnity against all loss, liability and expense; shall be entitled to the advice of counsel in all matters concerning the trust, and shall be entitled to reasonable compensation for its services, and to receive, on demand, from the Railroad Company, party of the first part, all sums due for its services and expenses, which sums shall be a first lien on the property hereby conveyed and all the property in its hands belonging to the trust; and the Railroad Company, party of the first part, hereby declares and agrees that it will on demand promptly pay to the Trustee entitled thereto all such sums. But this Article shall not relieve any bondholder from the necessity, if required by the Trustee, of giving indemnity, to be enforceable by the Trustee, in respect of any 669

action requested by such bondholder which the Trustee, looking to the interest of the whole body of bondholders, shall believe ought not to be taken.

IN WITNESS WHEREOF, the said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, party of the first part, has caused its corporate seal to be affixed to this Indenture and to one other Indenture of the same tenor and date, and the same to be attested by the signatures
671 of its President and Treasurer; and the said Central Trust Company of New York, party of the second part, has caused its corporate seal to be affixed to this Indenture, and to one other Indenture of the same tenor and date, and the same to be attested by the signatures of its Second Vice-President and Assistant Secretary, to testify its acceptance of the said trust; the day and the year first above written.

TWENTY EIGHTH AND TWENTY-NINTH STREETS
CROSSTOWN RAILROAD COMPANY,
By LEWIS C. HUNT,
[SEAL] President.
672 Attest:
B. FRANKLIN DE FRECE,
Treasurer.

CENTRAL TRUST COMPANY OF NEW YORK,
By E. FRANCIS HYDE,
[SEAL] 2nd Vice-President.

Attest:
B. G. MITCHELL,
Asst. Secretary.

STATE OF NEW YORK,
City and County of New York, } ss.:

On this 1st day of October, A. D. eighteen hundred and ninety-six, before me personally came LEWIS C. HUNT, to me known, and known to me to be the person who executed the foregoing instrument as the President of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, and who, being by me duly sworn, did depose and say that he resides in New York City; that at the time of the execution of the foregoing 674
instrument he was, and now is the President of said Company, the corporation described in and which executed the above instrument; that he knows the corporate seal of the said Company; that the seal affixed to the foregoing instrument is the corporate seal of the said Company, and was so affixed by order of the Board of Directors of the said Company, and that by a like order he signed the foregoing instrument as its President. On the same day, before me personally came B. FRANKLIN DE FRECE, to me known, and known to me to be the person who executed the foregoing instrument as the Treasurer of the said Company, 675
who, being by me duly sworn, did depose and say that he resides in New York City; that at the time of the execution of the foregoing instrument he was, and now is, the Treasurer of said Company; that he knows the corporate seal of the said Company; that the seal affixed to the foregoing instrument is the corporate seal of the said Company, and was so affixed by order of the Board of Directors of the said Company, and that

by a like order he attested the same as its Treasurer.

GEORGE W. VULTEE,
Notary Public (22),
C. & C. of N. Y.

(Seal)

STATE OF NEW YORK, }
City and County of New York, } ss.:

677 On this 1st day of October, A. D. eighteen hundred and ninety-six, before me personally came E. FRANCIS HYDE, to me known, and known to me to be the person who executed the foregoing instrument as the 2nd Vice President of Central Trust Company of New York, and who, being by me duly sworn, did depose and say: That he resides in the City of New York; that at the time of the execution of the foregoing instrument he was, and now is, the 2nd Vice President of the said Company, the corporation described in and which executed the above instrument; that he knows the corporate seal of said Company; that
678 the seal affixed to the foregoing instrument is the corporate seal of said Company, and was so affixed by authority of the Board of Trustees of the said Company, and that by like authority he signed the foregoing instrument as its 2nd Vice President. And on the same day before me personally came B. G. MITCHELL, to me known and known to be the person who executed the foregoing instrument as the Assistant Secretary of said Company, who, being by me duly sworn, did depose and say that he resides in New York City;

that at the time of the execution of the foregoing instrument he was, and now is the Assistant Secretary of said Company; that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is the corporate seal of the said Company, and was so affixed by authority of the Board of Trustees of the said Company, and that by like authority he attested the same as its Assistant Secretary.

FRANK B. SCHMID,
Notary Public,
(Seal) N. Y. Co. 680

STATE OF NEW YORK, }
City and County of New York, } ss.:

The undersigned stockholders of Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, owning all the stock of the corporation hereby consent that the foregoing mortgage (dated October 1st, 1896, and executed by Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, party of the first part, and Central Trust Company of New York, party of the second part), be issued. 681

WITNESS our hands and seals at the City of New York the first day of October, 1896.

CHARLES W. TRUSLOW, (L. S.)
R. W. M. GUNN, (L. S.)
W. R. BUCKMINSTER, (L. S.)
B. FRANKLIN DE FRECE, (L. S.)
EDGAR H. ROSENSTOCK, (L. S.)
LEWIS C. HUNT, (L. S.)

682 JOHN W. HAMER, et al. *vs.*

NATHAN OTTINGER, (L. S.)
C. D. YEREANCE, (L. S.)
MARK J. KATZ, (L. S.)
JAMES V. FALVEY, (L. S.)
F. W. ELDER, (L. S.)
SAMUEL S. HINDS, (L. S.)
JOSEPH T. SCHIEFFELIN, (L. S.)
MAURICE J. KATZ, (L. S.)
EDGAR M. JOHNSON, (L. S.)
ALBERT H. WALKER, (L. S.)

683 STATE OF NEW YORK, } SS.:
City and County of New York, }

On this 1st day of October, 1896, before me personally came Charles W. Truslow, Robert W. M. Gunn, William R. Buckminster, B. Franklin de Frece, Edgar H. Rosenstock, Lewis C. Hunt, Nathan Ottinger, Charles D. Yereance, Mark J. Katz, James V. Falvey, Francis W. Elder, Samuel S. Hinds, Joseph T. Schieffelin, Maurice J. Katz, Edgar M. Johnson and Albert H. Walker, each to me personally known and known to me to be the persons who executed the foregoing consent to the foregoing mortgage, and each and
684 every of said persons acknowledged to me that he executed the said consent as his free act and deed.

WITNESS my hand and seal of office the day and year aforesaid.

GEORGE W. VULTEE,
Notary Public (22),
(Seal) C. & C. of N. Y.

STATE OF NEW YORK, }
City and County of New York, } ss.:

B. FRANKLIN DE FRECE, being duly sworn, says that he is Secretary of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, named in the foregoing indenture of mortgage and the custodian of its stock book. That Charles W. Truslow, Robert W. M. Gunn, William R. Buckminster, B. Franklin de Frece, Edgar H. Rosenstock, Lewis C. Hunt, Nathan Ottinger, Charles D. Yereance, Mark J. Katz, 686
James V. Falvey, Francis W. Elder, Samuel S. Hinds, Joseph T. Schieffelin, Maurice J. Katz, Edgar M. Johnson and Albert H. Walker, who have executed the foregoing consent to the foregoing mortgage are, and at the time of such execution were, the owners upon the books of said company of all the shares of stock of the said corporation which have been issued.

B. FRANKLIN DE FRECE.

Sworn to before me this 1st }
day of October, 1896. }

687

GEORGE W. VULTEE,
Notary Public (22),
(Seal) C. & C. of N. Y.

OFFICE OF THE REGISTER OF DEEDS, &C., }
City and County of New York, } ss.:

I have compared the annexed copy with an instrument filed and recorded in this office on the 1st day of October, A. D. 1896, at 12 o'clock M. in Block Series (Mortgages), Section 3, Liber ,

688 JOHN W. HAMER, et al. *vs.*

page, and Section 4, Liber , page , and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal this 1st day of October, 1896.

WM. SOHMER,
Register.

(Seal)

The property affected by the within instrument
689 is located in

Section 3, Block Nos. 980, 955, 956, 930, 931, 957, 932, 958, 959, 933, 960, 934, 935, 908, 909, 910, 883, 884, 885, 961, 962, 963, 936, 937, 938, 939, 964, 965, 966, 883, 884, 885, 857, 858, 859, 829, 830, 831, 803, 804, 805, 777, 778, 779, 751, 752, 753, 725, 726, 727, 699, 700, 701, 702, 728, 703, 729, 704, 730, 705, 731, 706, 679, 680, 681, 707, 682, 708, 683, 709, 684, 710, 685, 711, 674, 673, 672, 698, 671, 697, 670, 696, 669, 668, 663, 662, 667, 666, 687, 686, 662.

Section 4, Block Nos. 1088, 1069, 1089, 1070, 1090, of the land map of the City of New York.

690 Record as mortgage and record and file as consent of stockholders and return to

CHARLES W. TRUSLOW,
15 Broad Street,
N. Y. City.

Plaintiffs Exhibit 16.

TRAFFIC AGREEMENT BETWEEN TWENTY-EIGHTH AND TWENTY-NINTH STREETS RAILROAD COMPANY AND METROPOLITAN STREET RAILWAY COMPANY.

AGREEMENT made and entered into this 29th day of September, 1896, between the Twenty-eighth and Twenty-ninth Streets Crosstown Railway Company, party of the first part, and the Metropolitan Street Railway Company, party of 692
the second part, witnesseth as follows:

WHEREAS, the party of the first part is a street surface railroad corporation organized and existing under the laws of the State of New York, and the owner of the rights, franchises and privileges of constructing and maintaining a street surface railroad upon and over the streets mentioned in the resolution of the Common Council of the City of New York, adopted on or about November 30th, 1886, and which railroad is constructed principally on Twenty-eighth and Twenty-ninth Streets, between First Avenue and Eleventh
Avenue in said city, and upon other streets men- 693
tioned in said resolution; and

WHEREAS, the party of the second part is also a street surface railroad corporation, which owns certain railroads in the City of New York, and also operates certain other railroads under lease, and amongst others that of the Twenty-third Street Railway Company, whose depot is at the foot of West Twenty-third Street, New York; and

WHEREAS, it is for the interests of the party of the first part that the party of the second part should run and operate cars upon the routes of the party of the first part;

NOW, THEREFORE, this agreement witnesseth that the parties hereto, for and in consideration of the sum of One ($1.) Dollar to each in hand paid by the other, and of the other valuable considerations herein expressed, have agreed, and do hereby agree as follows:

695 FIRST: The party of the first part agrees to, and hereby does grant to the party of the second part, the right and privilege to use the railroad tracks of the party of the first part owned and constructed upon the streets referred to in said resolution, to operate cars thereon for and during the term of this agreement in common with the cars of the party of the first part, and to collect all fares of passengers riding in such cars.

The said party of the first part will not grant any right for the use of said tracks to any other party whomsoever.

696 SECOND: The party of the second part does hereby agree to and with said party of the first part as follows:

(a) To run cars daily upon and over said road, and so many thereof as may be necessary to accommodate the traffic desiring to ride thereon.

(b) To pay the principal and interest of the First Mortgage Five per cent. Gold Bonds of the party of the first part, to the amount of One

Million five hundred thousand ($1,500,000) Dollars, which bonds are for the sum of One thousand ($1,000) Dollars each, and payable on October 1st, 1996, and to pay interest thereon semi-annually at the rate of five (5) per cent. per annum on the first days of April and October in each year.

(c) To pay all taxes of every kind and nature whatsoever that may become due and payable by the party of the first part or liens upon its property. 698

(d) To maintain the railroad of the party of the first part in good condition and repair, including any pavement required by law to be maintained by the said party of the first part, and also to remove the snow and ice from the railroad structure as may be hereinafter required by any lawful authority.

THIRD: This agreement is to continue during the corporate existence of the parties.

IN WITNESS WHEREOF, the parties have hereunto affixed their corporate seals, duly attested by their respective officers, the day and year first above written. 699

TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSSTOWN RAILWAY COMPANY,

By H. H. VREELAND,
President.

[SEAL]

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Attest
CHARLES E. WARREN,
Secretary.

METROPOLITAN STREET RAILWAY COMPANY,

By D. B. HASBROUCK,
Vice President.

Attest
[SEAL]
CHARLES E. WARREN,
701 Secretary.

City and County of New York, ss.:

On this 21st day of December, A. D. 1897, before me personally came Herbert H. Vreeland, to me known, who being by me duly sworn, did depose and say that he resided in the City of New York, and State of New York, that he is the President of the Twenty-eighth and Twenty-ninth Streets Crosstown Railway Company, the corporation described in and which executed the foregoing instrument; that he knew the seal of said
702 corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of directors of said corporation, and that he signed his name thereto by the like order.

S. A. EMANUEL,
Notary Public,
N. Y. Co.

City and County of New York, ss.:

On this 21st day of December, A. D. 1897, before me personally came Daniel B. Hasbrouck, to me known, who being by me duly sworn, did depose and say that he resided in the City of New York, and State of New York, that he is the Vice President of the Metropolitan Street Railway Company, the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to the said instrument was such corporate seal; 704
that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by the like order.

S. A. EMANUEL,
Notary Public,
N. Y. Co.

705

706 JOHN W. HAMER, et al. *vs.*

Plaintiff's Exhibit 22.

PART OF JUDGMENT ROLL IN ACTION IN SUPREME COURT, NEW YORK COUNTY, ENTITLED CENTRAL TRUST COMPANY OF NEW YORK, PLAINTIFF, AGAINST TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSSTOWN RAILROAD COMPANY ET AL.

AMENDED COMPLAINT.

707 SUPREME COURT,

COUNTY OF NEW YORK,

CENTRAL TRUST COMPANY OF NEW YORK,
Plaintiff,

against

TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSSTOWN RAILROAD COMPANY; JOSEPH B.
708 MAYER as Temporary Receiver of Twenty-Eighth and Twenty-Ninth Streets Crosstown Railroad Company, and METROPOLITAN STREET RAILWAY COMPANY,
Defendants.

The plaintiff above named respectfully shows and alleges to the Court as follows:

FIRST: That at all the times hereinafter mentioned the plaintiff was and now is a domestic

corporation, created and existing under an Act of the Legislature of the State of New York, entitled "An Act to Incorporate Central Trust Company of New York," and the several Acts amendatory thereof and supplemental thereto, and having power to accept the mortgage hereinafter mentioned and to execute the trusts thereunder.

SECOND: That at all the times hereinafter mentioned the defendant Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company (hereinafter for brevity called the "Railroad Company"), was and still is a domestic corporation, duly created and existing under the laws of the State of New York. 710

That at all the times hereinafter mentioned the defendant Metropolitan Street Railway Company (hereinafter for brevity called the "Metropolitan Company"), was and still is a domestic corporation, duly created and existing under the laws of the State of New York.

THIRD: That the defendant Railroad Company, ever since its incorporation, has had full power and authority to own and possess the property conveyed by it and by the mortgages hereinafter mentioned and therein set forth and hereinafter described, and had full power and authority to execute and deliver said mortgage for the purposes therein set forth, and that the plaintiff had full power and authority to receive said mortgage and to accept the trusts created in and by the same. 711

FOURTH: That about the 1st day of October, 1896, the defendant Railroad Company, in the

due exercise of the powers and authority by it in that behalf possessed, and due corporate action having first been had, for the purpose of acquiring, completing, equipping and operating its railroad for the transaction of its business and the exercise of its corporate rights, privileges and franchises, and for its other lawful corporate purposes, did determine to issue its bonds, to be known as its first mortgage five per cent. gold bonds, consisting of one thousand five hundred bonds of the par value of one thousand dollars
713 each, numbered consecutively from one to fifteen hundred, both inclusive, each payable to bearer or to the registered holder thereof, in gold coin of the United States of America of or equal to the then standard of weight and fineness on the first day of October, 1996, at its office or agency in the city of New York, with interest thereon from the first day of October, 1896, at the rate of five per cent. per annum, payable in like gold coin semi-annually on the first days of April and October in each year, upon the presentation and surrender of the coupons annexed thereto as they should severally become due.

714 That thereafter the defendant Railroad Company made and executed its bonds in the amount and numbered as aforesaid, of the aggregate par value of principal of $1,500,000, bearing date the first day of October, 1896, and by each of said bonds the said defendant acknowledged itself indebted and for value received promised to pay to the bearer, or, if the bond was registered, to the registered holder thereof, on the first day of October, 1996, at its office or agency in the city of New York, the sum of one thousand dollars, in gold coin of the United States of America of or

equal in weight and fineness to the then standard, with interest thereon from the first day of October, 1896, at the rate of five per cent. per annum, payable in like gold coin, semi-annually, on the first days of April and October in each year, upon presentation and surrender of the interest coupons thereto annexed as they severally become due, until such principal sum was fully paid.

That all of said $1,500,000 par value of bonds have been duly executed by the said defendant, authenticated by the plaintiff, and duly issued and 716
delivered by it pursuant to the provisions of the mortgage hereinafter mentioned, and plaintiff is informed and believes that the said $1,500,000 of bonds executed by the said defendant Railroad Company and authenticated by the plaintiff and delivered as aforesaid were guaranteed by the defendant Metropolitan Company, as hereinafter set forth, and as so guaranteed have been duly issued, negotiated and sold, and that all of the same are now outstanding and valid obligations of the defendant Railroad Company, and that the same, with the coupons annexed thereto, have come into the possession of a large number of persons for 717
value who are now the *bona fide* owners and holders thereof, the names of many of such persons being unknown to the plaintiff.

That all of said bonds are in the form, or substantially in the form, and of the tenor recited and set forth in the mortgage of the defendant Railroad Company hereinafter mentioned, to which reference is hereby made, and a copy whereof is hereto annexed, marked "Exhibit A."

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FIFTH: That in order to secure the payment of the principal and interest of said bonds and coupons thereto annexed as the same should become due and payable, and the performance of all the other covenants and agreements on the part of the defendant Railroad Company contained in said bonds, the said defendant, in the further due exercise of the corporate authority by it in that behalf possessed, and due corporate action having first been had, made, executed and delivered to the plaintiff its certain mortgage
719 or deed of trust bearing date the first day of October, 1896, wherein and whereby it granted, bargained, sold, transferred, set over, assigned, aliened, released, conveyed and confirmed unto the plaintiff, as trustee, and its successor or successors in the trust thereby created, all and singular its property and franchises of every nature and description whatsoever, whether then owned or thereafter to be acquired, including all its equipment and personalty, and all its lands, buildings and real estate in the city of New York and elsewhere, and all its railroads, railroad properties, railroad routes and all its franchises, rights
720 and privileges to maintain and operate railroads and to exact fares thereon, and all its rights, privileges and franchises to use the roads, routes and franchises of other companies, and including also certain other property mentioned and set forth in said mortgage or deed of trust; to have and to hold the said property and franchises described in said mortgage or deed of trust for the pro rata benefit and security of the holders of the bonds and coupons secured thereby without preference or priority to one bond over another or others by reason of priority in the time

of issue and negotiation thereof, or otherwise, so that each and all of said bonds issued and to be issued should have the same right, lien and privilege under and by virtue of said mortgage and should be equally secured thereby with like effect as if they had been executed and negotiated simultaneously with the delivery of said mortgage and for the same consideration. The plaintiff annexes hereto a copy of said mortgage, marked "Exhibit A," and prays that the same may be considered as though set forth at length in this complaint, and the contents thereof spread in full upon the face hereof. 722

SIXTH: That the plaintiff duly accepted the trusts created in and by said mortgages, and as evidence of its acceptance thereof united in the execution of the same, and said mortgage was thereafter duly recorded in the office of the clerk of the county of New York, where said mortgaged property or a portion thereof was situated.

SEVENTH: That after the authentication and delivery of said bonds as aforesaid, but, as plaintiff is informed and believes, prior to their negotiation and sale, the defendant Metropolitan Company, for a valuable consideration, pursuant to due and lawful corporate action on its part, duly and lawfully guaranteed to plaintiff as trustee of the mortgage hereinabove set forth, for the benefit of the holders of said bonds, punctual payment of both the principal and interest thereof, and caused said guaranty to be endorsed upon each of said bonds in the following words and figures: 723

"For value received, The Metropolitan Street Railway Company hereby guarantees to the Trustee of the within mentioned mortgage, for the benefit of the holders hereof, the punctual payment of the principal of the within bond and the interest thereon at the time and in the manner therein specified and according to the tenor of the several coupons belonging thereto.

IN WITNESS WHEREOF the said The Metropolitan Street Railway Company has caused
725 its corporate name to be signed hereto by its president or Vice President, and its corporate seal to be affixed and attested by its Secretary or Assistant Secretary this first day of October, 1896.

THE METROPOLITAN STREET RAILWAY, COMPANY,

By H. H. VREELAND,

(Corporate Seal) President.

Attest:

CHARLES E. WARREN,

Secretary."

726

EIGHTH: That heretofore, to wit, on or about the first day of October, 1908, the defendant Railroad Company made default in the payment of the instalment of interest mentioned in said bonds and coupons which accrued and became due and payable on said date upon said bonds, and payment of all or some part of said instalment of interest was duly demanded on or about the date on which the same became due and at the place where the same was payable. The amount of

which instalment of interest was the sum of $37,500, and said defendant Railroad Company did not pay and has not paid or caused to be paid any of said interest or said coupons when they became due, and has not paid or satisfied or caused to be paid or satisfied, nor has any other person paid or satisfied said semi-annual instalment of interest on said bonds, or any part thereof, which became due October 1, 1908, as aforesaid, in any manner, though payment thereof was duly demanded, and said defendant Railroad Company has not furnished or provided or placed at 728
the office of the plaintiff at its financial agency in this city of New York or elsewhere, any sum or sums of money whatever to pay said interest and interest coupons which became due October 1, 1908, although the same were payable at its office or agency in the city of New York, and thereby default has been made by the defendant Railroad Company in the performance of the terms and conditions of its said mortgage dated October 1, 1896, which default still continues.

NINTH: In and by said mortgage it was provided that if default should be made in the pay- 729
ment of all or any part of any instalment of interest secured thereby, and the same should remain unpaid and in arrears for the space of six months, or default should be made in the payment of any taxes or assessments upon the mortgaged premises or other charges having priority over the lien of said mortgage, and the same should remain in arrears for the space of one year after the same became due and payable, then after the lapse of said periods respectively the entire principal sum secured by said bonds

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then outstanding, together with all arrearage of interest thereon, should forthwith become due and payable, provided a majority in interest of the bondholders of said bonds should so elect and certify their said election in writing to the trustee, signed by them or their lawful attorneys and duly acknowledged.

Plaintiff alleges that heretofore and on or about the 2nd day of April, 1909, a majority of the holders of the bonds outstanding under said mortgage notified it in writing, duly signed and ac-
731 knowledged by them, that they elected, by reason of the default in the payment of interest which accrued October 1, 1908, and its continuance for a period of six months, that the principal sum secured by said bonds then outstanding should become forthwith due and payable, and thereupon, pursuant to the provisions of said mortgage, the said principal sum did become due and payable.

TENTH: Upon information and belief, that the security so as aforesaid given to it by the defendant Railroad Company for the payment of
732 said bonds and the interest thereon is, in the present condition and situation of the mortgaged premises, inadequate to secure the payment of the said bonds with interest thereon according to their tenor and effect.

Plaintiff also alleges that the defendant Railroad Company has neglected the mortgaged premises and suffered the same to become dilapidated and out of repair.

Plaintiff further alleges, upon information and belief, that the defendant Railroad Company is wholly insolvent and unable to pay its just debts

and liabilities in full, and that the mortgaged premises and property set forth in the said mortgage or deed of trust hereinabove referred to constitute one single system of street railroad, with its appurtenances, property and franchises, which should be conducted as a single enterprise and should not be dismembered or sold in sections or portions, and that it is for the interest of all parties that the said property, premises and franchises be sold as an entirety in one lot or parcel, and that the value of such property in portions or sections is and will be much less 734
than its value as a whole, in that said mortgaged premises, property and franchises are so constructed that the same cannot be sold in separate lots and parcels without great and irreparable loss and sacrifice to the plaintiff and the owners and holders of the bonds secured by the mortgage sought to be foreclosed herein.

ELEVENTH: That heretofore and on or about the 28th day of September, 1908, in a certain action brought in this Court by the Attorney General on behalf of the people of the State of New York against the defendant Railroad Company, 735
the complaint in which action alleged that the defendant Railroad Company for more than a year prior to the commencement of the action had been and had remained and then was insolvent and prayed for a dissolution of the defendant Railroad Company and a distribution of its property and effects among its creditors, and for other relief, the defendant Joseph B. Mayer was appointed temporary receiver of the defendant Railroad Company and required to give bond in the sum of thirty-five thousand dollars for the faith-

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ful performance of his duties as such temporary receiver.

Plaintiff is informed and believes that said Joseph B. Mayer thereafter duly gave bond in the sum required by said order, which bond was approved by a Justice of the Supreme Court, and thereafter said Joseph B. Mayer took possession of the property and effects of the defendant Railroad Company as such temporary receiver, and that said property and effects have been since such possession taken as aforesaid and
737 now are in the possession of said Joseph B. Mayer as such temporary receiver.

TWELFTH: Upon information and blief, that no action other than this has been brought to recover any part of the mortgage debt hereinbefore set forth.

WHEREFORE, plaintiff demands judgment:

1. That the above mortgage dated October 1, 1896, executed by the defendant Railroad Company and delivered to the plaintiff may be foreclosed, and that said mortgage may be decreed
738 to be a lien upon the premises and property thereby granted and conveyed and on all property connected with and appertaining to said mortgaged property.

2. That the defendant Railroad Company be decreed to pay the amount due and unpaid upon the bonds secured by said mortgage, together with all costs and expenses and equitable charges in that behalf incurred and expended, and in default thereof that the defendants and all persons

claiming or to claim under them may be forever barred and foreclosed of and from all and every right and equity of redemption and claim of, in and to said mortgaged property and every part and parcel thereof.

3. That all and singular the mortgaged property and premises, with the appurtenances, effects, incidents, additions and increase thereof, with all the rights, immunities, privileges and franchises mentioned in said mortgage may be sold under final judgment or decree of this Court. 740

4. That an accountaing may be had wherein it shall be ascertained and determined the amount due upon said bonds, and what allowance shall equitably be made to the plaintiff as trustee for its compensation and expenses, and that out of the moneys arising from the sale of said property under said decree and after payment of the costs and expenses of this action and the expenses of the sale and any allowances which may be made to the plaintiff and its attorneys and counsel and any prior lien or encumbrance on said mortgaged premises, the amount of the balance may be applied to the satisfaction of the sum due and unpaid secured by said mortgage and paid over to the plaintiff as trustee or to the holders of said bonds and coupons; and that in case the proceeds of sale be found insufficient to pay the amount due upon the said bonds, that the defendant Metropolitan Street Railway Company may be decreed to pay the deficiency. 741

5. That the defendants Railroad Company and Metropolitan Company may be adjudged to be

742 JOHN W. HAMER, et al. *vs.*

liable and may be required to pay to the plaintiff the amount of any deficiency which may remain after the application of such balance in the manner aforesaid, and that plaintiff as trustee may have judgment against said Railroad Company and said Metropolitan Company for the amount thereof.

6. That a receiver may be appointed by this Court according to the course and practice of this Court, with the usual powers of receivers in
743 like cases, of all the mortgaged property, premises and franchises and the rents, incomes and profits thereof.

7. That an injunction may issue restraining the defendants and all other persons from interfering with, selling or disposing of any of said mortgaged property, and from taking possession of or attempting to sell, either by judicial process or otherwise, the said property, or any part thereof, and that this plaintiff may have its costs, allowances and compensation for its services and expenses as trustee, and for such other or further relief, judgment or decree as to the Court may
744 seem just.

JOLINE, LARKIN & RATHBONE,
Attorneys for Plaintiff,
Office and Post Office Address,
54 Wall Street,
New York City.

(Verification.)

Answer to Amended Complaint.

SUPREME COURT,

COUNTY OF NEW YORK.

CENTRAL TRUST COMPANY OF NEW YORK,
Plaintiff,

against

746

TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSSTOWN RAILROAD COMPANY; JOSEPH B. MAYER as Temporary Receiver of Twenty-Eighth and Twenty-Ninth Streets Crosstown Railroad Company, and METROPOLITAN STREET RAILWAY COMPANY,
Defendants.

The Metropolitan Street Railway Company, one of the defendants above named (hereinafter termed this defendant), appearing herein by J. 747
Parker Kirlin, its attorney, for its answer to the amended complaint herein respectfully shows and alleges to the Court as follows:

I. This defendant admits on information and belief the allegations contained in paragraphs "First," "Third," "Fourth," "Fifth," "Sixth," "Eighth" and "Ninth" of said amended complaint.

II. This defendant admits that it was and now is a domestic corporation duly created and exist-

ing under the laws of the State of New York. This defendant admits on information and belief the other allegations contained in paragraph "Second" of said amended complaint.

III. This defendant admits the allegations contained in paragraph "Seventh" of said amended complaint.

IV. This defendant denies that the defendant Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company neglected the premises
749 mortgaged by the mortgage described in said amended complaint and that the said defendant suffered the same to become dilapidated or out of repair. This defendant admits on information and belief the other allegations contained in paragraph "Tenth" of said amended complaint.

V. This defendant denies that it has any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "Eleventh" and "Twelfth" of said amended complaint.

750 WHEREFORE, this defendant prays that the Court may take such action in the premises as shall be proper.

J. PARKER KIRLIN,
Attorney for Defendant Metropolitan
Street Railway Company,
Office and P. O. Address,
27 Willam Street,
Borough of Manhattan,
New York City.

(Verification.)

Judgment.

At a Special Term, Part I, of the Supreme Court, held in and for the County of New York, at the County Court House in the Borough of Manhattan, City, County and State of New York, on the 19th day of February, 1910.

Present—Hon. M. WARLEY PLATZEK, *Justice.*

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CENTRAL TRUST COMPANY OF NEW YORK,
Plaintiff,

against

TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSSTOWN RAILROAD COMPANY; JOSEPH B. MAYER as Temporary Receiver of Twenty-Eighth and Twenty-Ninth Streets Crosstown Railroad Company, and METROPOLITAN STREET RAILWAY COMPANY,
Defendants. 753

This action having been originally brought against the defendants Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company (hereinafter for brevity called the Twenty-eighth Street Company) and Joseph B. Mayer as temporary receiver of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, and

said defendants having duly appeared in said action; and thereafter leave having been granted, upon due notice to all the parties thereto, to bring in as a party defendant the Metropolitan Street Railway Company by supplemental summons and to serve an amended complaint; the said Metropolitan Street Railway Company (hereinafter for brevity called the Metropolitan Company) having been duly brought in as a party defendant, and said supplemental summons and amended complaint having been duly served upon all parties;
755 and the defendants other than the said Metropolitan Company having made default in pleading herein; and said action having been by order dated June 4, 1909, referred to Newell Martin, Esq., as referee to hear and determine the issues raised by the pleadings, including the amount due upon said mortgage, and whether the mortgaged property and premises could be sold in parcels without prejudice to the interest of the parties; and said referee having taken the proofs offered by the various parties, and having found that the material facts set forth in the amended complaint are true, and that the mortgage set forth in the
756 amended complaint herein, bearing date the 1st day of October, 1896, is a valid and subsisting mortgage and constitutes a lien upon the mortgaged premises, property and franchises hereinafter set forth; that there have been issued and are now outstanding and secured by said mortgage dated October 1, 1896, fifteen hundred (1,500) of the bonds mentioned and described therein, of the par value of one thousand dollars ($1,000) each, aggregating one million five hundred thousand dollars ($1,500,000) of principal, together with coupons for interest thereunto ap-

pertaining; that default was made in the payment of the several instalments of interest which became due upon said bonds respectively on the first days of October, 1908, and April, 1909; that on or about April 2, 1909, pursuant to the provisions in said mortgage contained the principal of said bonds was declared and became forthwith due and payable; that prior to the negotiation and sale of said bonds the defendant Metropolitan Company duly guaranteed the punctual payment of the principal and interest thereof, and caused said guarantee to be duly endorsed upon each of 758
said bonds in the form set forth in paragraph "Seventh" of the amended complaint, and that the amount due upon the said bonds and mortgage dated October 1, 1896, set forth in the amended complaint, to the date of said report, was the sum of one million six hundred and thirty-nine thousand one hundred and sixty seven and 67/100 dollars ($1,639,167.67), and it further appearing that the mortgaged premises, property and franchises constitute one single system of street railroad, with its appurtenances, and should be conducted as a single enterprise and should not be dismembered or sold in sections or 759
portions, and that the interest of the holders of the bonds and of all parties to this action is that the same be sold as an entirety in one lot or parcel, and that no other action than this has been brought to recover the mortgage debt or any part thereof; and upon due proof of service of notice of motion for this judgment, and due proof of the filing of the findings and decision of the referee herein;

Now, on motion of Joline, Larkin & Rathbone, attorneys for the plaintiff herein, it is

ORDERED, ADJUDGED AND DECREED that the report and findings of Newell Martin, Esq., the referee herein, be and the same hereby are in all things confirmed. It is further

ORDERED, ADJUDGED AND DECREED that on or about the 1st day of October, 1896, the defendant Twenty-eighth Street Company made its certain
761 mortgage, whereby it conveyed to the Central Trust Company of New York as Trustee all and singular the mortgaged premises in said amended complaint and herein described, to secure an issue of bonds of the aggregate par value of principal of one million five hundred thousand dollars ($1,500,000); that said mortgage was and is the proper act and deed of said Twenty-eighth Street Company, duly authorized and made, executed, delivered and recorded in all respects in conformity with law; that prior to the sale of the said bonds, punctual payment of the principal and interest thereof was duly guaranteed by the defendant Metropolitan Company; that said mortgage is
762 a valid lien upon the property, premises and franchises hereinafter described, to secure said issue of bonds of the aggregate par value of one million five hundred thousand dollars ($1,500,000), all of which said bonds were duly issued under and are secured by said mortgage and are now valid outstanding obligations of said Twenty-eighth Street Company and in the hands of bona fide holders for value. It is further

ORDERED, ADJUDGED AND DECREED that there is now due and payable at the date of this decree for principal, interest and coupons on said bonds secured by said mortgage dated October 1, 1896, the following sums, namely,

Instalment of interest which matured October 1, 1908.....	$37,500.00
Instalment of interest which matured April 1, 1909.....	37,500.00
Principal of the bonds.....	1,500,000.00
Interest thereon from April 1, 1909, to the date of the referee's report at 5% (February 8, 1910).....	64,167.67
Total	$1,639,167.67

764

together with interest thereon from the date of the said referee's report or findings to the date hereof. It is further

ORDERED, ADJUDGED AND DECREED that the defendants in this action and all persons claiming or to claim under, from or through them subsequent to the commencement of this action and the due filing of the notice of pendency thereof, be and they hereby are forever barred and foreclosed from all right, title, interest, claim, lien and equity of redemption of, in and to or respecting the mortgaged premises, property, rights and franchises described in said mortgage and in the amended complaint, and in every part and parcel thereof. It is further

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ORDERED, ADJUDGED AND DECREED that said mortgaged premises, property and franchises, real and personal, mentioned and described in the amended complaint in this action and hereinafter set forth, be sold, subject to all taxes, assessments, water rents and other claims against said property which are liens prior to said mortgage, as an entirety in one lot or parcel at public auction to the highest bidder at the New York Real Estate Sales Room, Nos. 14 and 16 Vesey Street, Borough of Manhattan, City, County and State of
767 New York, according to law and the rules and practice of this Court, subject to the conditions hereinafter stated, by Newell Martin, Esq., of New York City, counsellor at law, who is hereby appointed referee for that purpose, and that said referee give public notice of the time and place of said sale, according to the rules and practice of this Court. It is further

ORDERED, ADJUDGED AND DECREED that such sale shall be made upon the following terms and conditions, namely:

(1) The referee shall accept no bid for the
768 mortgaged premises, property, rights and franchises less than the sum of Fifty Thousand Dollars ($50,000.00). The referee shall receive no bid from any person offering to bid for the mortgaged premises, property, rights and franchises who shall not first deposit with him as a pledge that he will make good his bid in case of its acceptance the sum of Five Thousand Dollars ($5,000.00) in cash or by certified check on some national bank or trust company of the City of

New York, made or endorsed payable to the order of said referee. Immediately upon receipt of the highest bid for the said mortgaged premises, property and franchises, which said bid must equal the upset price hereinbefore set forth, the purchaser shall forthwith deposit with the referee as security that he will make good his bid in case of the acceptance of the same a sum which, taken with the cash deposit aforesaid, shall equal ten per cent (10%) of the amount so bidden, which said deposit shall be held by the referee as security that such purchaser will make good his bid 770
if the same is accepted by the Court. Such deposit shall be made in cash or by certified check on some national bank or trust company of the City of New York, made or endorsed payable to the order of said referee; or in lieu of such cash such purchaser may deposit with said referee an amount in par value of the bonds secured by said mortgage dated October 1, 1896, which, when taken with the cash theretofore deposited, shall equal twenty-five per cent. (25%) of the amount so bidden. All deposits received from the successful bidder shall be retained by the referee and be applied by him on account of the purchase 771
price of the mortgaged property. Deposits received from any unsuccessful bidder shall be returned to him.

(2) The purchaser of the mortgaged property, premises and franchises shall, in addition, deposit in cash or make such further payments in cash on account of the purchase price as the Court may by its order or orders direct upon the confirmation of such sale or afterwards, and the

Court reserves the right to retake and resell said property, premises and franchises hereby directed to be sold upon the failure of the purchaser thereof, or his successors or assigns, to comply with the terms or conditions of such sale or any order of the Court in respect to the payment of the purchase price; and in case of any resale upon the failure of the purchaser, his successors or assigns, to comply with the conditions of such sale or the order of the Court relative to such additional payments which may from time to time be directed
773 to be paid, all sums paid by such purchaser, his successors or assigns, shall be forfeited as a penalty for such failure; but in case such sale shall not be confirmed by the Court, any deposits or payments made by the purchaser, his successors or assigns, on account of said sale shall be returned to him.

(3) The balance of the purchase money not paid in cash or directed by the Court to be paid in cash, as hereinbefore provided, may be paid by the purchaser, or his successors or assigns, either in cash or in bonds of the defendant Twenty-eighth Street Company and the coupons belonging
774 thereto, secured by said mortgage dated October 1, 1916, hereinbefore mentioned, to be delivered to said referee in the manner herein provided; said bonds and coupons to be received by said referee at the sum which the holder thereof would be entitled to receive thereupon from and out of the proceeds resulting from the sale of the mortgaged property, premises and franchises if the entire purchase price was paid in cash and after making the payments therefrom which are herein

directed or which may hereafter be directed. It is further

ORDERED, ADJUDGED AND DECREED that said referee do immediately upon making said sale and compliance with the terms thereof and hereof by the purchaser, his successors and assigns, so far as such terms should be complied with before the confirmation of such sale, make a report of such sale and of his proceedings in the premises to the Court; and upon the confirmation of the said sale, the referee, upon the payment of the pur- 776
chase price in full or provisions satisfactory to the Court having been made for the payment thereof in full, shall make, execute and deliver to such purchaser, his successors or assigns, a good and sufficient assignment, bill of sale, or deeds of conveyance and transfer of the property, premises and franchises so sold. It is further

ORDERED, ADJUDGED AND DECREED that the purchaser, his successor or assigns, upon the delivery of such deed of conveyance or other appropriate transfer or assignment, shall be vested with and shall hold, possess and enjoy the mortgaged prop- 777
erty, premises and franchises therein described, with all the rights of the defendant Twenty-eighth Street Company, and all the rights appertaining thereto, and that said purchaser, his successors or assigns, shall, upon the production of said referee's deed, be let into possession and control of the said premises, property and franchises, and that the defendants, or any other party or person who may be in possession or control of the said premises, property and franchises

so sold, conveyed, transferred and assigned, or any part or portion thereof, and any person who since the commencement of this action and the filing of the notices of pendency thereof may have come into such possession or control, shall deliver possession and control thereof to such purchaser, his successors or assigns, upon the production of the referee's deed or deeds. It is further

ORDERED, ADJUDGED AND DECREED that the purchaser at such sale, his successor or assigns, shall
779 not be required to assume or adopt any contracts or agreements of the defendant Twenty-eighth Street Company, but shall have the right to elect whether or not to adopt or assume the same, or any part thereof, within three (3) months after the confirmation of said sale. It is further

ORDERED, ADJUDGED AND DECREED that out of the cash proceeds resulting from the sale of the said premises, property and franchises said referee shall pay all lawful charges and disbursements attending the said sale, and his own compensation for making the same, to be fixed by the Court upon the confirmation of the report of sale; that
780 he also pay to the plaintiff or its attorneys the sum of Two hundred dollars ($200.00/100), adjudged to the plaintiff for its allowance in this action, and the amount of its costs and disbursements herein to be taxed; also to pay to the plaintiff such further sum as may be allowed by the Court upon the coming in of the report of the referee hereinafter directed for the compensation, disbursements and expenses of the plaintiff as trustee under the said mortgage hereinbefore men-

tioned, and for the compensation, disbursements and expenses of its counsel and attorneys in this action and in the execution of its trusts as aforesaid; the amount of such allowances for compensation, expenses, disbursements and counsel fees being herein expressly reserved for the future adjudication and determination of the Court. It is further

ORDERED, ADJUDGED AND DECREED that the said referee be and he is hereby directed, after the confirmation of said sale, to take evidence, ascer- 782
tain and report to the Court as follows:

(1) The amount which should be allowed as compensation to the plaintiff as trustee in this action and in the execution of its trusts created by said mortgage dated October 1, 1896, including all expenses and disbursements in the execution of said trusts, and the counsel fees and disbursements of its attorneys and counsel in this action.

(2) What part or portion of the proceeds of said sale which may be paid in cash after making the payments or providing for the payments of 783
the amounts hereinbefore directed to be paid and applied to the payment of the interest coupons due and unpaid and the principal due and unpaid of said bonds, without preference of interest over principal or principal over interest; and what amount is to be credited upon each of said bonds with the coupons thereto belonging which may be delivered to and received by the referee on account of the purchase price of the mortgaged premises, property and franchises. It is further

ORDERED, ADJUDGED AND DECREED that after the ascertainment of the amounts to be paid or allowed to the holders of said bonds out of the proceeds of said sale upon or in respect to said bonds or any of them, after providing for the payments of the costs and expenses of said sale and reference, the plaintiff's costs and allowances, and the compensation, disbursements and expenses of plaintiff as trustee and of its attorneys and counsel, said referee, in the manner to be provided in and by an order of this Court to be
785 made upon the report of said referee, shall apply the net cash proceeds of sale—

(1) To the payment of the principal and interest due and unpaid up the said bonds of the defendants Twenty-eighth Street Company issued and secured by its said mortgage dated October 1, 1896, pro rata, according to the amounts due thereon respectively, without preference of principal over interest or interest over principal, so far as such bonds or coupons shall not be paid or delivered to the said referee for or on account of payment of any part of the purchase money of said mortgaged premises, property and fran-
786 chises hereby directed to be sold. Such payment shall be made upon the presentation of said bonds and coupons for proper endorsement or stamping thereon of the amount paid on account of the sum due upon the same. If the proceeds of said sale shall be sufficient to pay said bonds and coupons in full, then the bonds and coupons so paid shall be delivered to the plaintiff to be cancelled. In case the proceeds of said sale shall not be sufficient to pay the amounts due upon all

of said bonds and coupons in full, the amount paid on account of the sums due on any of said bonds and coupons shall be stamped or endorsed upon the said bonds and coupons not paid in full, and the same shall be returned to the person or persons presenting the same for payment on account thereof, or their successors or assigns, or upon his or their order.

(2) Said referee shall also ascertain and report the amount to be credited on account of the sum due upon each and any of said bonds and 788
coupons which may be delivered to the said referee as payment on account of the purchase price of said mortgaged premises, property and franchises. If the amount so to be credited on the said bonds and coupons shall be sufficient to pay in full the amount due thereon, then the same shall be delivered to the plaintiff for cancellation. In case the amount so credited on said bonds and coupons shall not be sufficient to pay the amount due thereon, then the amount so ascertained shall be stamped or endorsed upon said bonds, and the same shall be delivered to or upon the order of any person or persons depositing the same with 789
the referee, or to his or their successors or assigns. It is further

ORDERED, ADJUDGED AND DECREED that all moneys received by said referee upon said sale or on account of the purchase price of the mortgaged property, premises and franchises, shall be deposited by the referee in his name as such with the plaintiff, Central Trust Company of New York, as a special deposit; said moneys to be

drawn by said referee pursuant to this decree or upon the further order of the Court in the premises, and for the purposes hereinbefore set forth. All bonds delivered to the referee on account of the purchase price of said mortgaged premises, property and franchises shall be forthwith deposited by said referee with the plaintiff, Central Trust Company of New York.

If any surplus shall remain after making the payments hereinbefore provided to be made, the same shall be paid to and retained by the plain-
781 tiff, Central Trust Company of New York, to the credit of this cause, subject to the further order of the Court.

In case the proceeds of such sale shall not be sufficient to pay in full the amounts heretofore found to be due and unpaid for or in respect to the principal and interest upon each and all of said mortgage bonds, said referee shall report to the Court the amount of any such deficiency, and the plaintiff, Central Trust Company of New York, as trustee, shall have judgment for the amount thereof against the defendant Twenty-eighth and Twenty-ninth Streets Crosstown Rail-
792 road Company and against the defendant Metropolitan Street Railway Company, and shall have execution therefor against the defendant Twenty-eighth Street Company in accordance with the rules and practice of this Court, the right being reserved to plaintiff to apply on notice for leave to issue execution against the defendant Metropolitan Company. It is further

ORDERED, ADJUDGED AND DECREED that in case any of the bonds and coupons not turned in in

part payment of the purchase price of the property, premises and franchises herein directed to be sold are not presented to the referee for payment within thirty (30) days after the completion of the said sale for proper payment and stamping, the said referee shall transfer and deliver to the Central Trust Company of New York, the plaintiff herein, any and all moneys applicable to the payment of the amount payable upon the bonds and coupons not thus turned in; and that said Central Trust Company of New York hold said sums thus transferred, and pay the same out 794
upon presentation of the said bonds and coupons for proper stamping. It is further

ORDERED, ADJUDGED AND DECREED that any of the parties to this cause, or their successors, representatives or assigns, may at any time apply to this Court for any further order, direction or relief at the foot of this decree.

The following is a description of the mortgaged premises, property and franchises hereinbefore mentioned and hereby directed to be sold as hereinbefore provided, namely:
795

All the right, title and interest of the defendant The Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company in and to all and singular its property and franchises of every nature and description whatsoever, including all its equipment and personalty, and all its lands, buildings and real estate in the City of New York, and elsewhere, and in all its railroads, railroad properties, railroad routes and all its franchises,

rights and privileges to maintain, construct, or operate railroads, and to exact fares thereon, and all its rights, privileges and franchises to use the roads, routes and franchises of other companies;

Including particularly the following railroads and franchises:

A certain railroad, and the right, privilege and franchises of constructing, operating and maintaining a street surface railroad upon certain
797 streets situated in the City and County of New York, and described as follows:

"COMMENCING at or near the ferry landing at West Forty-second Street and North River, and running thence on West Forty-second Street, with double tracks, to Eleventh Avenue; thence on Eleventh Avenue, with double tracks, to West Thirty-fourth Street; also from West Thirty-fourth Street and North River, on West Thirty-fourth Street, with double tracks, to Tenth Avenue; thence on Tenth Avenue, with double tracks, to West Thir-
798 tieth Street; thence on West Thirtieth Street, with single track and turnout, to Ninth Avenue; thence on Ninth Avenue, with double tracks, to West Twenty-ninth Street, and to West Twenty-eighth Street; thence on West and East Twenty-ninth Street, and West and East Twenty-eighth Street, with a single track in each street, to First Avenue; thence on First Avenue, with double tracks, to East Twenty-fourth Street;

thence on East Twenty-fourth Street, with double tracks, to Avenue A; thence on Avenue A, with double tracks, to East Twenty-third Street; thence on East Twenty-third Street, with double tracks, to the ferries at East Twenty-third Street and East River; also from East Twenty-eighth Street and First Avenue, on First Avenue, with double tracks, to East Thirty-fourth Street; thence on East Thirty-fourth Street, with double tracks, to the ferry landing at East Thirty-fourth 800
Street and East River, or from First Avenue and East Thirty-third Street, on East Thirty-third Street, and private property, with double tracks, to the last mentioned ferry landing; also from Ninth Avenue and West Twenty-ninth Street, on West Twenty-ninth Street, with a single track, to Tenth Avenue; thence on Tenth Avenue, with double tracks, to West Twenty-eighth Street, or by continuing single track on West Twenty-ninth Street to Eleventh Avenue; and thence on Eleventh Avenue, with single track, to West 801
Twenty-ninth Street; also from Ninth Avenue and West Twenty-eighth Street, on West Twenty-Eighth Street, with single or double tracks, to Eleventh Avenue, thence on Eleventh Avenue, with double tracks, to West Twenty-fourth Street; thence on West Twenty-fourth Street, with double tracks, to Thirteenth Avenue; thence on Thirteenth Avenue, with double tracks, to West Fourteenth Street and North River,

with all necessary switches, turnouts, turntables, connections and stands, for the proper and convenient working of the said road."

Together with the privileges, rights and franchises owned by the Railroad Company, and all lands owned or acquired, and all equipment and personal property owned or acquired, and all railways, depots, or stations, and all buildings erected for use in connection with said railroad,
803 and all cars, carriages, tools, chattels, machinery and appliances owned or acquired by the Railroad Company, or in any way belonging or appertaining to the Railroad Company, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the Railroad Company of, in and to the same, and every part and parcel thereof, with the appurtenances.

804 Enter,

M. W. P.,
J. S. C.

WM F. SCHNEIDER,
Clerk.

PLEASE TO TAKE NOTICE that a judgment, of which the foregoing is a copy, was duly entered and filed in the office of the Clerk of the County

of New York at the County Court House in the Borough of Manhattan, City, County and State of New York, on the 19th day of February, 1910.

Dated, New York, March 3, 1910.

Yours, etc.,

JOLINE, LARKIN & RATHBONE,
Attorneys for Plaintiff,
Office and Post Office Address,
54 Wall Street,
New York City. 806

To:

JOHN B. B. FISKE, Esq.,
Attorney for Defendant Twenty-eighth & Twenty-ninth Streets Crosstown Railroad Company,

Messrs. MAYER & GILBERT,
Attorneys for Defendant Joseph B. Mayer, Temporary Receiver.

J. PARKER KIRLIN, Esq.,
Attorney for Defendant Metropolitan Street Railway Company. 807

808 JOHN W. HAMER, et al. *vs.*

Plaintiff's Exhibit 24.

DIRECTION TO DOCKET JUDGMENT.

SUPREME COURT,

NEW YORK COUNTY.

CENTRAL TRUST COMPANY OF NEW YORK,
Plaintiff,
against
809
TWENTY-EIGHTH and TWENTY-NINTH STREETS CROSSTOWN RAILROAD COMPANY; JOSEPH B. MAYER as Temporary Receiver of Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company; and METROPOLITAN STREET RAILWAY COMPANY,
Defendants.

The Clerk of the County of New York will please enter in the above entitled action judgment in favor of the above plaintiff against the above
810 named defendant, Metropolitan Street Railway Company, for One million seven hundred and forty-five thousand three hundred and forty-four and 21/100 dollars ($1,745,344.21) pursuant to the judgment of foreclosure and sale heretofore entered in said action, and the referee's report dated January 22, 1912, and filed in the office of the Clerk of the County of New York on said date.

Dated, New York, February 20th, 1912.

JOLINE, LARKIN & RATHBONE,
Plaintiff's Attorneys.

NEW YORK RAILWAYS COMPANY, et al. 811

Plaintiff's Exhibit 28.

FINAL REPORT OF REFEREE.

SUPREME COURT,

NEW YORK COUNTY.

CENTRAL TRUST COMPANY OF NEW YORK,
Plaintiff,

against

TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSSTOWN RAILROAD COMPANY, and others,
Defendants.

812

To the Honorable the Supreme Court:

I, NEWELL MARTIN, the referee appointed by the judgment of foreclosure and sale in this action bearing date the 19th day of February, 1910, and entered and filed in the office of the Clerk of the County of New York on said day, to make a sale of the lands and property therein particularly described, do respectfully report as follows:

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I caused the notice of sale to be published at least twice in each of the three weeks immediately preceding the sale in newspapers published in the County of New York wherein the mortgaged property is situated, to wit, in the New York Law Journal and in the Evening Post. Hereto

annexed and marked Exhibit "A" are affidavits showing publication of said notice of sale as aforesaid.

At the time and place for which said sale was set, namely at 12 o'clock noon on the 4th day of January, 1912, at the Exchange Sales Rooms, Nos. 14 and 16 Vesey Street, Borough of Manhattan, City, County and State of New York, I attended in person and then and there, as required by said decree, I offered through Joseph P. Day, auctioneer, for sale at public auction to the highest
815 bidder, the premises and property which was in and by said decree directed to be sold, the same being described in said notice of sale hereto attached and marked Exhibit "B."

I offered the premises, property and franchises adjudged by said decree to be subject to the mortgage therein mentioned, as an entirety and in one lot or parcel. The highest and best bid for said property was made by John W. Hamer, Chairman of the Bondholders and Reorganization Committee, and on behalf of such committee, who had heretofore qualified himself to bid for the mortgaged premises, property and franchises by
816 first depositing with me as a pledge that he would make good his bid in case of its acceptance, the sum of $5,000 in cash. The said bid by the said J. W. Hamer, Chairman, etc., for said mortgaged property, premises and franchises, was the sum of $50,000 and was the highest and best bid received by me for said mortgaged premises, property and franchises, and said John W. Hamer, Chairman, etc., was the highest bidder therefor. The mortgaged premises, property and franchises were thereupon struck off to said John W. Hamer, Chairman, etc., immediately upon my acceptance

of his bid delivered to me in addition to the $5,000 deposited by him as aforesaid for the purpose of qualifying him to bid at the sale, the certificate of the Central Trust Company of New York that it held subject to his order $200,000 par value of the bonds secured by the mortgage of the Twenty-eighth and Twenty-ninth Streets Crosstown Railway Company foreclosed herein.

The said sale was made upon the terms, conditions, and subject to the provisions as stated in said judgment or decree of sale and upon the terms of sale announced at said sale and the said 818 purchaser has signed a memorandum of said sale and purchase and agreed to comply with the terms of said sale as so announced.

I have deposited the cash received by me in the Central Trust Company of New York to my credit as referee and hold such cash and certificate for the benefit of the parties entitled thereto. I am informed and believe that the purchaser of said property and premises is ready and willing to complete the purchase in accordance with the provisions of said judgment and the terms of sale herein upon confirmation of the same.

819

All of which is respectfully submitted.

Dated, January 4, 1912.

NEWELL MARTIN.
Referee.

820 JOHN W. HAMER, et al. *vs.*

Exhibit "A."

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK, } ss.:

JOHN J. COSGROVE, being duly sworn, says; that he is the principal clerk of the publisher of the New York Law Journal, a daily newspaper printed and published in the County of New York; that the advertisement hereto annexed has been regularly published in the said The New York Law Journal twice a week for three successive weeks commencing on the 14th day of
821 December, 1911, and also on January 4th, 1912.

JOHN J. COSGROVE.

Sworn to before me this }
4th day of January, 1912. }
S. G. FRENCH,
Notary Public,
New York Co., 127.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

H. C. WOOD, being duly sworn, says; that he is the principal clerk of the publisher of The Evening Post, a daily newspaper printed and published
822 in the City and County of New York; that the notice hereto annexed has been regularly published in the said "The Evening Post" on December 14th, 19th, 21st, 26th, 28th, 1911, January 2nd, 4th, 1912.

H. C. WOOD.

Sworn to before me this }
4th day of January, 1912. }
SAMUEL WILLIAMS,
Notary Public,
New York Co., No. 62.

Exhibit "B."

SUPREME COURT,

COUNTY OF NEW YORK.

CENTRAL TRUST COMPANY OF NEW YORK,
Plaintiff,

against

824

TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSSTOWN RAILROAD COMPANY, and others,
Defendants.

In pursuance of a judgment of foreclosure and sale, duly made and entered in the above entitled action and bearing date the 19th day of February, 1910, I, the undersigned, the referee in said judgment named, will sell at public auction, at the Exchange Sales Rooms, Nos. 14 and 16 Vesey Street, Borough of Manhattan, City, County and State of New York, on the 23rd day of March, 825
1910, at twelve o'clock noon on that day, by Joseph P. Day, auctioneer, the premises directed in said judgment to be sold, and therein described as follows:

All the right, title and interest of the defendant The Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company in and to all and singular its property and franchises of every nature and description whatsoever, including all its equipment and personalty, and all its lands,

buildings and real estate in the City of New York and elsewhere, and all its railroads, railroad properties, railroad routes and all its franchises, rights and privileges to maintain, construct or operate railroads, and to exact fares thereon, and all its rights, privileges and franchises to use the roads, routes and franchises of other companies, including particularly the following railroads and franchises:

A certain railroad, and the right, privilege and
827 franchises of constructing, operating and maintaining a street surface railroad upon certain streets situated in the City and County of New York, and described as follows:

"Commencing at or near the ferry landing at West Forty-second Street and North River, and running thence on West Forty-second Street, with double tracks, to Eleventh Avenue; thence on Eleventh Avenue, with double tracks, to West Thirty-fourth Street; also from West Thirty-fourth Street and North River, on West Thirty-fourth Street, with double tracks, to Tenth Avenue; thence on Tenth Avenue, with double tracks,
828 to West Thirtieth Street; thence on West Thirtieth Street, with single track and turnout, to Ninth Avenue; thence on Ninth Avenue, with double tracks, to West Twenty-ninth Street, and to West Twenty-eighth Street; thence on West and East Twenty-ninth Street and on West and East Twenty-eighth Street, with a single track in each street, to First Avenue; thence on First Avenue, with double tracks, to East Twenty-fourth Street; thence on East Twenty-fourth Street, with double tracks, to Avenue A; thence on Avenue A,

with double tracks, to East Twenty-third Street; thence on East Twenty-third Street, with double tracks, to the ferries at East Twenty-third Street and East River; also from East Twenty-eighth Street and First Avenue, on First Avenue, with double tracks, to East Thirty-fourth Street; thence on East Thirty-fourth Street, with double tracks, to the ferry landing at East Thirty-fourth Street and East River, or from First Avenue and East Thirty-third Street, on East Thirty-third Street and private property, with double tracks, to the last mentioned ferry landing; also from 830
Ninth Avenue and West Twenty-ninth Street, on West Twenty-ninth Street, with a single track, to Tenth Avenue; thence on Tenth Avenue, with double tracks, to West Twenty-eighth Street, or by continuing single track on West Twenty-ninth Street to Eleventh Avenue; and thence on Eleventh Avenue, with single track, to West Twenty-eighth Street; also from Ninth Avenue and West Twenty-eighth Street, on West Twenty-eighth Street, with single or double tracks, to Eleventh Avenue; thence on Eleventh Avenue, with double tracks, to West Twenty-fourth Street; thence on West Twenty-fourth Street, 831
with double tracks, to Thirteenth Avenue; thence on Thirteenth Avenue, with double tracks, to West Fourteenth Street and North River, with all necessary switches, turnouts, turntables, connections and stands, for the proper and convenient working of the said road."

Together with the privileges, rights and franchises owned by the Railway Company, and all lands owned or acquired, and all equipment and personal property owned or acquired, and all railways, depots or stations, and all buildings

erected for use in connection with said railroad, and all cars, carriages, tools, chattels, machinery and appliances owned or acquired by the Railroad Company, or in any way belonging or appertaining to the Railroad Company, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the Railroad
833 Company of, in and to the same and every part and parcel thereof, with the appurtenances.

The property will be offered for sale as an entirety. Pursuant to the provisions of said judgment, the referee will receive no bid from anyone who has not deposited with him as a pledge that he will make good his bid, five thousand dollars ($5,000) in cash, or by certified check on some national bank or trust company of the City of New York, made or endorsed, payable to the order of said referee. No bids shall be received for the property for a less sum than fifty thou-
834 sand dollars ($50,000).

Upon the acceptance of his bid the purchaser shall deposit with the referee an amount in cash or by certified check, as aforesaid, which, taken with the deposit to qualify him, shall equal ten per cent. (10%) of the amount of his bid, or an amount of the bonds secured by the mortgage foreclosed herein, which, at par, and taken with the deposit made as aforesaid, shall equal twenty-five per cent. ((25%) of the amount of his bid.

All deposits received from the successful bidder shall be retained and applied on account of

the purchase price. Deposits from any unsuccessful bidder shall be returned. The court reserves the right to require additional cash payments on account of the purchase price.

The balance of the purchase price not required in cash may be paid in bonds secured by the mortgage foreclosed, which will be accepted at the sum which the holder thereof would be entitled to receive out of the proceeds of sale had the entire purchase price been paid in cash.

The publication of a diagram as required by the court rule is dispensed with by order of the 836
court, dated February 21, 1910.

The property is sold subject to all taxes, assessments, water rates and other claims against the property, which are liens prior to the mortgage foreclosed.

For further particulars in respect to the property sold, the terms and conditions of sale, the powers reserved by the court over the property, and to all other matters in respect to the same, reference is made to the decree of forclosure and sale made and entered as aforsaid, and filed in the office of the Clerk of this Court, at the County Court House, in the County of New York, 837
on the 19th day of February, 1910.

Dated, New York, February 28th, 1910.

NEWELL MARTIN,
Referee.

JOLINE, LARKIN & RATHBONE,
Attorneys for Plaintiff,
54 Wall Street,
Borough of Manhattan,
City of New York.

The approximate amount of the lien or charge, to satisfy which the property is to be sold, is one million six hundred and thirty-nine thousand one hundred and sixty-seven dollars and sixty-seven cents ($1,639,167.67), with interest thereon from February 8, 1910, together with the expenses of the sale.

NEWELL MARTIN,
Referee.

839 The sale of the above mentioned premises is hereby adjourned to Wednesday, March 30, 1910, at the same time and place.

Dated, New York, March 23, 1910.

NEWELL MARTIN,
Referee.

Copy of Memorandum of Sale.

I have this 4th day of January, 1912, purchased the premises described in the above an-
840 nexed printed advertisement for sale for the sum of $50,000, and hereby promise and agree to comply with the terms and conditions of the sale of said premises as above mentioned and set forth, and as set forth in the judgment therein referred to dated February 19, 1910, on or before the 1st day of February, 1912.

Dated, January 4th, 1912.

JOHN W. HAMER,
Chairman Bondholders' Committee.

Complainant's Exhibit 29.

TRANSCRIPT OF JUDGMENT AGAINST METROPOLITAN STREET RAILWAY COMPANY.

October 23, 1914.

No. 242 68156 Form 29.

Names of Parties against whom Judgments have been obtained.	*Names of Parties in whose favor Judgments have been obtained.*
Metropolitan Street Railway Company	Central Trust Company of New York

842

Damages & Costs.	*Time of Filing.*	*Attorneys' Names.*	*When Satisfied.*
$1,745,344.21 E.	1912 Feby. 20 at 3 o'clock and 7 min. P. M. 334/1912	Joline, Larkin & Rathbone	

843

I, WILLIAM F. SCHNEIDER, Clerk of the County of New York, certify that I have compared the foregoing with the original entries in the above-entitled action, on the Docket of Judgments kept in this office, and that it is a correct transcript therefrom and of the whole thereof of a Judgment rendered in the Supreme Court of New York for said County.

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844 JOHN W. HAMER, et al. *vs.*

IN TESTIMONY WHEREOF, I have hereunto set my name and affixed my official seal, this 21st day of October, 1914.

WM. F. SCHNEIDER,
(Seal) Clerk.

Complainant's Exhibit 30.

845 TRANSCRIPT OF JUDGMENT AGAINST TWENTY-EIGHTH AND TWENTY-NINTH STREETS RAILROAD COMPANY.

No. 243. 68156 Form 29.

Names of Parties against whom Judgments have been obtained.	*Names of Parties in whose favor Judgments have been obtained.*
Twenty-eighth and Twenty-ninth Streets Railroad Company	Central Trust Company of New York

846

Deficiency.	*Time of Filing.*	*Attorneys' Names.*	*When Satisfied.*
$1,745,344.21 E.	1912 Jany. 22 at 3 o'clock and 55 min. P. M. 334/1912	Joline, Larkin & Rathbone	L.

I, WILLIAM F. SCHNEIDER, Clerk of the County of New York, certify that I have compared the foregoing with the original entries in the above-entitled action, on the Docket of Judgments kept in this office, and that it is a correct transcript therefrom and of the whole thereof of a Judgment rendered in the Supreme Court of New York for said County.

IN TESTIMONY WHEREOF, I have hereunto set my name and affixed my official seal, this 21st day of October, 1914. 848

WM F. SCHNEIDER,
(Seal) Clerk.

Plaintiff's Exhibit 40.

DECLARATION OF PRINCIPAL IN DEFAULT OF INTEREST PAYMENT.

To—

Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company. 849

Dear Sirs:

PLEASE TAKE NOTICE that default having been made by you in the payment of the instalment of interest falling due October 1, 1908, upon the bonds issued under and secured by your mortgage to the undersigned as trustee dated October 1, 1896, and such default having continued for six months after demand, and the undersigned having been requested so to do by a majority of

850 the holders of the outstanding bonds, the undersigned hereby declares the principal of all the one million five hundred thousand dollars ($1,500,000) of bonds issued under and secured by said mortgage forthwith due and payable.

Dated, New York, April 5, 1909.

CENTRAL TRUST COMPANY OF NEW YORK,

By E. FRANCIS HYLE,
Vice President.

851 (Corporate Seal)

Attest:
N. FERGUSON,
Secretary.

852

Defendant's Exhibit 4.

ORDER FILED OCTOBER 1ST, 1907, EXTENDING RECEIVERSHIP TO PROPERTIES OF METROPOLITAN STREET RAILWAY COMPANY.

IN THE
CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

854

THE PENNSYLVANIA STEEL COMPANY and DEGNON CONTRACTING COMPANY,
Complainants,

against

NEW YORK CITY RAILWAY COMPANY,
Defendant.

In the Matter

855

of

The Petition of METROPOLITAN STREET RAILWAY COMPANY.

On this 1st day of October, 1907, this cause came on to be heard upon the petition of Metropolitan Street Railway Company, to be made a party defendant in this suit, and for other relief,

856 JOHN W. HAMER, et al. *vs.*

on consideration whereof, and after hearing J. Parker Kirlin, for said petitioner; James Byrne, for the complainants, and James L. Quackenbush for the defendant,

IT IS ORDERED that the petitioner, Metropolitan Street Railway Company, be and it hereby is made a party defendant in this cause.

IT IS FURTHER ORDERED that the receivership in this cause be and the same hereby is extended to
857 the properties of said petitioner Metropolitan Street Railway Company as prayed in said petition, and that Adrian H. Joline and Douglas Robinson, heretofore appointed receivers in this cause be and they hereby are appointed receivers to the properties of said petitioner, with the powers and duties prescribed by order entered in this cause September 24th, 1907, appointing them receivers in this cause.

AND IT IS FURTHER ORDERED that each and every of the officers, directors, agents and employees of said petitioner Metropolitan Street Railway Company, and all other persons whomsoever be, and
858 they are hereby required and commanded forthwith, upon demand of the said receivers or their duly authorized agent, to turn over and deliver to said receivers or their duly constituted representative, any and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys or other property in his or their hands or under his or their control and each of such directors, officers, agents and employees is hereby commanded and required to obey and perform such orders as may be given to them from

time to time by the said receivers or their duly constituted representatives, in conducting the operation of the said system and in discharging their duties as receivers.

And said petitioner, said Metropolitan Street Railway Company and its officers, directors, agents and employees and all other persons claiming to act by, through or under said petitioner and all other persons whomsoever are hereby enjoined from interfering in any way whatsoever with the possession or management of any part 860
of said property over which the receivers have been apointed or interfering in any way to prevent the discharge of their duties or their operating the same; and any party in interest may apply for direction.

Dated, New York, October 1st, 1907.

E. HENRY LACOMBE,
U. S. Circuit Judge.

Filed October 1st, 1907.

861

862 JOHN W. HAMER, et al. *vs.*

Defendant's Exhibit 5.

ORDER FILED OCTOBER 8, 1897, IN PENNSYLVANIA STEEL COMPANY ACTION, MAKING RECEIVERSHIP PERMANENT.

IN THE

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

863 THE PENNSYLVANIA STEEL COMPANY and DEGNON CONTRACTING COMPANY,
Complainants,

against

NEW YORK CITY RAILWAY COMPANY, METROPOLITAN STREET RAILWAY COMPANY,
Defendants.

AND NOW, on this seventh day of October, 1907,
864 this cause came on further to be heard upon the pleadings and upon the order made in this cause on the 24th day of September, 1907, directing that the parties hereto show cause why the receivership of the New York City Railway Company and of its property should not be continued during the pendency of this suit, and thereupon after hearing James Byrne of counsel for complainants, James L. Quackenbush of counsel for the defendant New York City Railway Company,

J. Parker Kirlin of counsel for the defendant Metropolitan Street Railway Company,

IT IS ORDERED, ADJUDGED AND DECREED that Adrian J. Joline and Douglas Robinson, heretofore by said order of September 24, 1907, appointed temporary receivers of said defendant New York City Railway Company and of all the property of said defendant, be continued as receivers during the pendency of this suit of said defendant and of all the property of said defendant, real, personal and mixed of whatsoever kind 866
and description and wheresoever situated, including all railroads owned, leased or operated by said defendant, all tracks, terminal facilities, offices, shops and all buildings and appurtenances of every kind, all cars and other rolling stock and equipment, tools, machinery, furniture, fixtures, materials and supplies, books of account, records and other books, papers and accounts, cash in bank, on deposit and in hand, money, debts, things in action, credits, stocks, bonds, securities, deeds, leases, contracts, muniments of title, bills receivable, rents, issues, profits and income accruing and to accrue as well as all in- 867
terest, easements, privileges and franchises and all assets of every kind; that the said receivers be and they hereby are authorized to run, manage and operate the said railroads and properties; to collect the rents, income, tolls and profits of the said railroads and property, and to exercise the authority and franchise of said defendant and discharge its public duties, acting in all things subject to the supervision of this Court; and

868 JOHN W. HAMER, et al. *vs.*

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said receivers be, and they hereby are authorized in their discretion to employ and discharge and fix the compensation of all attorneys, managers, superintendents, agents and employees, and to make such payments and disbursements as may be needful and proper in so doing; that the said receivers be and they hereby are, authorized and empowered to institute and prosecute, in their own names or in the name of said New York City Railway Company, all such suits as
869 may be necessary in their judgment for the proper protection of the trust estate and the discharge of their trust, and likewise to defend all actions instituted against them as receivers, and also to appear in and continue or defend any suits now pending in any court to which said defendant New York City Railway Company is a party, the continuance or defense of which will in the judgment of said receivers be necessary for the proper protection of the trust estate, or the interests and rights of creditors connected therewith; * *

AND IT IS FURTHER ORDERED, ADJUDGED AND DE-
870 CREED that said Adrian H. Joline and Douglas Robinson heretofore by order entered in this cause on October 1, 1907, appointed also receivers of the properties of the defendant Metropolitan Street Railway Company, be and they hereby are continued as receivers during the pendency of this suit of the properties of said defendant Metropolitan Street Railway Company and of said defendant and as such receivers shall have and may exercise in respect thereof the like rights, powers and duties with respect to said defendant that such receivers are hereinbfore given with re-

spect to the New York City Railway Company and its properties.

AND IT IS FURTHER ORDERED that each and every of the officers, directors, agents and employees of said defendant Metropolitan Street Railway Company, and all other persons whomsoever, be and they are hereby required and commanded forthwith, upon demand of the said receivers or their duly authorized agents, to turn over and deliver to said receivers or their duly constituted representative, any and all books of account, vouchers, 872
papers, deeds, leases, contracts, bills, notes, accounts, moneys or other property in his or their hands or under his or their control.

And said defendant, said Metropolitan Street Railway Company, and its officers, directors, agents and employees and all other persons claiming to act by, through or under said petitioner and all other persons whomsoever, are hereby enjoined from interfering in any way whatsoever with the possession or management of any part of said property over which the receivers have been appointed or interfering in any way to prevent the discharge of their duties or 873
their operating the same.

IT IS FURTHER ORDERED that the bonds in the sum of two hundred and fifty thousand dollars heretofore given by said receivers for the faithful performance of their duties and filed in this cause stand and be and the said bonds hereby are approved.

874 JOHN W. HAMER, et al. *vs.*

IT IS FURTHER ORDERED that the statement of the powers, duties and rights of said receivers contained in this order supersedes, from and after the entry of this order, the statement thereof contained in said orders of September 24th, 1907, and October 1st, 1907.

IT IS FURTHER ORDERED that any party in interest may apply for further direction.

Dated, New York, October 9th, 1907.

875

E. HENRY LACOMBE,
United States Circuit Judge.

Filed October 9th, 1907.

876

Defendant's Exhibit 6.

ORDER FILED NOVEMBER 7TH, 1907, IN PENNSYLVANIA STEEL COMPANY ACTION APPOINTING SPECIAL MASTER AND FINDING METROPOLITAN STREET RAILWAY COMPANY INSOLVENT.

IN THE

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK. 878

THE PENNSYLVANIA STEEL COMPANY and DEGNON CONTRACTING COMPANY,

against

NEW YORK CITY RAILWAY COMPANY et al.

And now, on this 8th day of November, 1907, this cause came on further to be heard upon 879
the pleadings and the petition of Metropolitan Street Railway Company, verified the 1st day of October, 1907, to be made a party defendant herein, and upon all the proceedings had in the cause, whereupon, on further consideration thereof, the solicitors for all the parties being before the Court, it is

ORDERED, ADJUDGED AND DECREED as follows, namely: The Court finds that the defendant, Met-

ropolitan Street Railway Company, is insolvent and that its assets and property of every description constitute a fund in which the creditors of said defendant are interested, and that the assets of said corporation should be marshalled and the nature and extent of the rights, liens, equities and priorities of the several creditors thereof should be ascertained and decreed by the Court.

And it is further ORDERED, ADJUDGED AND DECREED that it be referred to William L. Turner, Esquire, heretofore appointed Special Master in
881 this cause, to take proof of the amount of all claims and demands against the said Metropolitan Street Railway Company and to report the same to this Court will all convenient speed.

And it is further ORDERED, ADJUDGED AND DECREED that all claims and demands against the said defendant shall be presented to the said Special Master on or before the fifteenth day of January, 1908, and that said Special Master give public notice accordingly by publication twice in each week for a period of three weeks in at least two daily newspapers published in the City of
882 New York to be selected by him, which said notice shall also contain a statement of the time and place of the first hearing before said Special Master.

And it is further ORDERED, ADJUDGED AND DECREED that Adrian H. Joline and Douglas Robinson, the Receivers heretofore appointed herein, file their accounts with said Special Master on the 10th day of January, 1908, covering the pe-

riod from September 24th, 1907, to and including December 31st, 1907, and shall file their accounts every two months thereafter, and that said Special Master shall examine the same and report thereon to the Court from time to time.

And all other questions not hereby disposed of and determined are reserved for further adjudication.

Dated, New York City, November 8th, 1907.

E. HENRY LACOMBE,
U. S. C. J. 884

Filed 9th November, 1907.

885

886 JOHN W. HAMER, et al. *vs.*

Defendants' Exhibit 76.

ORDER OF PUBLIC SERVICE COMMISSION DATED JANUARY 24TH, 1912.

At a stated Meeting of the Public Service Commission for the First District, duly held at its office, No. 154 Nassau Street, in the Borough of Manhattan, City and State of New York, on the 24th day of January, 1912.

887

Present—WILLIAM R. WILLCOX, *Chairman.*
MILO R. MALTBIE,
JOHN E. EUSTIS,
Commissioners.

In the Matter of The Plan for Reorganization of the METROPOLITAN STREET RAILWAY COMPANY and the proposed issue of securities in accordance therewith.	Case No. 1305. Order authorizing issue of securities.

888

SECTION 1. WHEREAS, an application, dated and verified December 27, 1910, was made to the Public Service Commission for the First District by Alexander J. Hemphill, Donald Mackay, Edward H. Ladd, Jr., and Henry Evans as a committee of holders of General and Collateral trust five per cent. bonds of Metropolitan Street Railway Company, issued under a mortgage made by said Company and dated February 1, 1897, to Guaranty Trust Com-

pany of New York, as Trustee, and by Edwin S. Marston, Otto H. Kahn, William P. Dixon, Robert Y. Hebden and Guy E. Tripp as a committee of holders of the four per cent. Refunding bonds of Metropolitan Street Railway Company, issued under a mortgage made by said Company, dated March 21, 1902, to Morton Trust Company, as Trustee, and by Guy E. Tripp, Otto H. Kahn, William P. Dixon, Edward H. Ladd, Jr., Alexander J. Hemphill and Edwin S. Marston as a Joint Committee acting for and on behalf of the said five per cent. bond Committee and 890
said four per cent. bond Committee, for the approval of the Commission to a certain plan and agreement for reorganization of the Metropolitan Street Railway Company, dated October 1, 1910, and the issue of securities by a new corporation in accordance with said plan and agreement, and

WHEREAS, thereafter the said plan and agreement, bearing date October 1, 1910, was modified and such modified plan and agreement, dated November 29, 1911, was presented to the Commission and application made by said Guy E. Tripp and others, constituting said Joint Committee, for 891
leave to substitute the said modified plan and agreement, dated November 29, 1911, in lieu of said original plan, dated October 1, 1910, and for an order authorizing the New York Railways Company, said new corporation organized in pursuance of said plan, dated November 29, 1911, *to* issue its stock and bonds to be applied and distributed in accordance with said plan and agreement of November 29, 1911, namely:

$17,500,000 par value of stock, face

$16,760,100 value of its Thirty Year First Real Estate and Refunding Mortgage Four Per Cent. Gold Bonds, and

$31,933,400 face value of Thirty Year Adjustment Mortgage Five Per Cent. Income Gold Bonds, and

WHEREAS, the said new corporation has been duly formed and created under the name of the New York Railways Company under the Laws of
893 the State of New York, and has been allowed to intervene and become a party hereto with the same force and effect as if it had been one of the original petitioners, and

WHEREAS, after a hearing and inquiry by the Commission upon said application, it appears to the Commission that a plan and agreement for reorganization of the Metropolitan Street Railway Company, bearing date November 29, 1911, has been prepared and entered into providing for the issue of the securities hereinbefore mentioned and for the payment, in pursuance of said plan, of the sum of $7,301,400 in money and for the acquisition
894 at foreclosure sales under said mortgages made by the Metropolitan Street Railway Company of property and franchises owned by the said Metropolitan Street Railway Company at the time of such sales; that such property and franchises have been purchased at such foreclosure sales by or in behalf of said Joint Committee, and have been conveyed or are to be conveyed by said purchasers to said New York Railways Company which is in possession thereof; and that the amount of securities of the said Met-

ropolitan Street Railway Company to which the said New York Railways Company succeeds is (subject to mortgages and obligations secured thereby to the net amount of $10,800,000) as follows:

Metropolitan Crosstown Railway Company, First Mortgage 5 per cent. bonds, due April 1, 1920,	$ 600,000
Metropolitan Street Railway Company, General and Collateral Trust Mortgage 5 per cent. bonds, dated February 1, 1897,	12,500,000
Metropolitan Street Railway Company, Refunding Mortgage 4 per cent. bonds, dated April 1, 1902,	16,604,000
Stock,	52,000,000
	$81,704,000

896

and that the new money to be paid in is $7,301,400, and that the securities proposed to be issued by the successor corporations, the New York Railways Company (subject to the said mortgages and obligations secured thereby to the net amount of $10,800,000) are as follows:

897

Stock, par value,	$17,500,000
First Real Estate and Refunding Bonds, face value,	16,768,100
Adjustment Bonds, face value,	31,933,400
Total,	$66,201,500

and

WHEREAS, in the opinion of the Court of Appeals in a certain *certiorari* proceeding wherein

the People of the State of New York on the relation of the Third Avenue Railway Company, and Others, were relators, and the Public Service Commission for the First District of the State of New York were respondents, decided November 21, 1911, it was held that the Commission was not justified in refusing the consent applied for to the issue of securities in accordance with the plan and agreement or reorganization because the value of the mortgaged property and the amount of new capital to be invested were less than the amount
899 of the securities to be issued by the corporation, and that such corporation has the right to an order of the Commission authorizing such corporation to issue securities in accordance with said plan and agreement up to the amount of the securities of the Company to whose property and franchises it has succeeded and the new money or property that may be put in the enterprise; and

WHEREAS, the amount of securities so proposed to be issued by the said New York Railways Company is less than the amount of the securities of the Metropolitan Street Railway Company and
900 the new money to be paid in, it is hereby

SECTION 2. ORDERED, that the Public Service Commission for the First District does hereby authorize, in conformity with the said decision of the Court of Appeals in the proceeding aforesaid, the issue by the New York Railways Company of

$17,500,000 par value of stock,

$16,768,100 face value of its Thirty Year First Real Estate and Refunding Mortgage

Four Per Cent. Gold Bonds, dated as of January 1, 1912, maturing January 1, 1942, at one hundred and five per cent. of their face value and accrued interest and to bear interest at four per cent. per annum, payable semi-annually,

$31,933,400 face value of Thirty Year Adjustment Mortgage Five Per Cent. Income Gold Bonds, dated as of January 1, 1912, maturing January 1, 1942, redeemable as a whole but not in part at their face value and the sum of $25.00 on each $1,000 face amount of 902
said bonds on any first day of January or July, and bearing non-cumulative interest from the 1st day of January, 1912, at the rate of five per cent. per annum at and to the extent that the income of the Company as defined and provided to be ascertained and determined shall suffice for such payment,

as provided in the said plan and agreement of reorganization submitted by said applicants to the Commission, and bearing date November 29, 1911.

SECTION 3. ORDERED, that said issue of stock and bonds is authorized upon the conditions following 903
and not otherwise, to wit:

FIRST. That the said New York Railways Company shall issue the said stock and bonds to the said Joint Committee, purchasers of the said property and franchises of said Metropolitan Street Railway Company at said foreclosure sales, for the property and franchises acquired at said sales and upon conveyance of the same to said Company, and for the further sum of $7,301,400 to be

paid in pursuance of said plan and agreement; that said stock and bonds shall be applied by the said Joint Committee only toward the purposes specified in said plan and agreement, bearing date November 29, 1911, as follows:

	Four Per Cent Refunding Bonds.	Adjustment Bonds	Stock
For 5% general and collateral trust bonds of the Metropolitan Street Railway Company or certificates representing the same	$6,250,000	$12,500,000	
For 4% refunding mortgage bonds of Metropolitan Street Railway Company or certificates representing the same	4,151,000	12,453,000	
For collateral 5% notes of the Central Crosstown Railroad Company due May 1, 1909	339,600	1,595,400	
For first mortgage bonds of Metropolitan Crosstown Railroad Company due April 1, 1920	90,000	510,000	
For tort claims against New York City Railway Company or Metropolitan Street Railway Company filed before the Special Master of the United States Circuit Court to the amounts adjudicated as valid thereon	937,500	1,875,000	
To holders, for stock of the Metropolitan Street Railway Company to the amount of $52,000,000 or of the Central Crosstown Railroad Company to the amount of $600,000 or for the Metropolitan Improvement notes to the amount of $4,000,000 on payment of $12.90 per $100 of the face thereof, or in so far as not so taken, to the joint committee on its payment of a like amount	4,997,780	2,999,800	17,495,060
For adjustment of fractional lots and such other purposes as the joint committee may decide	2,220	200	4,940
	$16,768,100	$31,933,400	$17,500,000

905

906

and that so much of said stock and bonds as shall not be required to carry out said purposes shall be by said Joint Committee returned to said New York Railways Company and cancelled.

SECOND. That said Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposal of stock and bonds hereby authorized to be issued, and on or before the tenth day of each month the Company shall make verified reports to the Commission, stating the sale or sales or disposals of said stock and bonds during the previous month, the terms and conditions of such sale or disposal, the moneys realized therefrom and the use and application of such moneys, and said accounts, vouchers and records shall be open to audit and may be audited from time to time by accountants and examiners designated for such purpose by the Commission. 908

THIRD. That the authority hereby given to issue such stock and bonds shall apply only to stock or bonds issued by the said Company on or before the 30th day of June, 1912.

SECTION 4. IT IS HEREBY ORDERED, that this order take effect on the 24th day of January, 1912, and except that as provided in the third Subdivision of Section 3, limiting the duration of the authority to issue stock and bonds herein granted, continue in force until otherwise ordered by the Commission, and that within ten days after service upon it of a copy of this order said New York Railways Company and said Joint Committee notify the Commission whether the terms of this order are accepted and will be obeyed. 909

BY THE COMMISSION,

(SEAL)

JAMES B. WALKER,
Acting Secretary.

910 JOHN W. HAMER, et al. vs.

Defendant's Exhibit 92.

REPORT OF SPECIAL MASTER IN CLAIM OF CENTRAL TRUST COMPANY FILED JULY 10TH, 1913.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

911 THE FARMERS' LOAN & TRUST COMPANY, as Trustee, successor of Morton Trust Company, as Trustee,

Complainant,

against

METROPOLITAN STREET RAILWAY COMPANY and others,

Defendants.

Equity No. 3-37.

In the Matter

912 of

The Claim of Central Trust Company of New York, as Trustee, under the mortgage of Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, dated October 1, 1896, against Metropolitan Street Railway Company.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

I, WILLIAM L. TURNER, duly appointed Special Master by decree duly made and filed on the 9th day of November, 1907, in the cause now pending in said court, wherein The Pennsylvania Steel Company and another are complainants and New York City Railway Company and others are defendants, Equity No. 2-9, to whom by said decree it was, among other things, referred to take proof of the 914
amount of all claims and demands against the Metropolitan Street Railway Company and to whom, by orders filed in the above entitled cause on March 20, 1909, August 3, 1911, October 23, 1911, and January 12, 1912, it was referred to take proof of the claim and demand of Central Trust Company of New York, as Trustee under the mortgage of Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, dated October 1, 1896, against Metropolitan Street Railway Company, do hereby make this separate report on the said claim of Central Trust Company of New York as follows:

915 The said claim having been duly filed with me and objections having been made thereto on behalf of the receivers of Metropolitan Street Railway Company, the said claim was brought on for hearing before me on the 19th day of February, 1912, at my office, Room 84, Cotton Exchange Building, in the Borough of Manhattan, in the City and State of New York, and was regularly proceeded with from time to time thereafter until it was closed on the 26th day of March, 1912, as

916 JOHN W. HAMER, et al. *vs.*

will more fully appear from the transcript of testimony on file with the clerk of this court.

At the said taking of proof and hearing Central Trust Company of New York, as trustee, under the mortgage of Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, dated October 1, 1896, appeared by Joline, Larkin & Rathbone, its solicitors (Arthur H. Van Brunt, Esq., and J. Cotter Connell, Esq., of Counsel); Adrian H. Joline and Douglas Robinson, as Receivers of Metropolitan Street Railway Company, appeared
917 by Masten & Nichols, their solicitors (William M. Chadbourne, Esq., of counsel, and The Farmers' Loan & Trust Company, as trustee, successor to Morton Trust Company, as trustee, appeared by Geller, Rolston & Horan, their solicitors (Charles T. Payne, Esq., of counsel).

I proceeded to take the proofs submitted by the parties and to hear arguments thereon and upon the proofs so taken I made and filed my report herein on the 31st day of May, 1912.

Thereafter by order of this Court filed November 15, 1912, the said report, with the exceptions which had been filed thereto, was referred back to
918 me with instructions to take such further proof as might be offered in respect of said claim by the claimant or any parties to the above entitled cause or any person interested in the fund and to report thereon with all convenient speed.

The said claim was brought on for hearing before me under said order on the 6th day of March, 1913, at my said office, and was regularly proceeded with from time to time thereafter, until it was closed on the 17th day of June, 1913, as will more fully appeal from the supplemental transcript filed herewith.

At the said taking of proof and hearing Central Trust Company of New York, as trustee under the mortgage of Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, dated October 1, 1896, appeared by Joline, Larkin & Rathbone, its solicitors (Lewis H. Freedman, Esq., and J. Cotter Connell, Esq., of counsel); Adrian H. Joline and Douglas Robinson, as receivers of Metropolitan Street Railway Company, appeared by Masten & Nichols, their solicitors (William M. Chadbourne, Esq., of counsel) and The New York Railways Company appeared by Richard Reid 920
Rogers, its solicitor (J. Tufton Mason, Esq., of counsel).

I proceeded to take the further proofs submitted by the parties and to hear arguments thereon and upon all the proofs taken, I find and report as follows:

I find and state the following facts and conclusions of law:

FINDINGS OF FACT:

I. During all the times hereinafter mentioned 921
Twenty-eighth and Twenty-ninth Street Crosstown Railroad Company and Metropolitan Street Railway Company, were street surface railway corporations, duly organized and existing under and by virtue of the laws of the State of New York.

II. By mortgage dated October 1, 1896, the Twenty-eighth Street Company mortgaged all of its property to Central Trust Company of New York, as trustees, to secure an issue of bonds of

the aggregate face amount of $1,500,000. The said bonds promised the payment of the principal on October 1, 1996, and the interest semi-annually on the first days of April and October. Each bond stated that it was secured by the mortgage referred to.

III. The mortgage of the Twenty-eighth Street Company above mentioned referred to contains the following provision in Article Third thereof:.

> "If default shall be made in the payment
> 923 of all or any part of any installment of the interest hereby secured to be paid, and should the same remain unpaid and in arrears for the space of six months after demand, or should any taxes or assessments upon the said mortgaged premises, or other charges having priority over the lien of this mortgage, remain in arrears for the space of one year after the same shall become due and payable, then and in that event, after the lapse of said periods respectively, the entire principal sum secured by said bonds then outstanding, together with all arrear-
> 924 age of interest thereon shall forthwith become due and payable, provided a majority in interest of the holders of said bonds shall so elect and certify their said election in writing to the Trustee, or its successors, signed by them or their lawful attorneys and duly acknowledged, even though the time in said bonds limited for the payment thereof shall not then have expired, anything in said bond contained to the contrary thereof notwithstanding."

IV. The said mortgage also provided in Article Fourth that in case of default in the payment of the principal, if such default shall continue

> "for sixty days after such payment shall become due either by the maturity of the bonds or by reason of the declaration of the Trustee under the provisions of this mortgage,"

it shall be the duty of trustee on the written request of a majority of the bondholders to sell the 926
mortgaged property; and in Article Fifth that it shall be the duty of the trustee, upon proper indemnification, to execute the power of sale therein granted, or to take appropriate proceedings at law or in equity to enforce the rights of the trustee and of the bondholders, to several remedies specified being cumulative and not exclusive one of the other.

V. Article Eleventh of the mortgage contains the following provision:

> "For the debt and bonds secured hereby the Railroad Company is liable *in personam*, and any deficiency, after exhausting 927
> the mortgage security, may be enforced against the Railroad Company, but not against its Directors or stockholders individually, and it is expressly agreed between the parties hereto and by every person who shall take or hold any bond or bonds issued hereunder, that the existing and all future Directors and stockholders of the Railroad Company shall not be indi-

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vidually liable to any extent or for any purpose with respect to said bonds or any of them."

VI. The said bonds were in the following form:

UNITED STATES OF AMERICA.
State of New York.

No. $1,000.

929 TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSSTOWN RAILROAD COMPANY.

First Mortgage Five Per Cent. Gold Bond.

Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, a corporation organized and existing under the laws of the State of New York, United States of America, for value received, promises to pay to Central Trust Company of New York, or bearer, or, if registered, to the registered owner hereof, the sum of one thousand dollars in gold
930 coin of the United States, of the present standard of weight and fineness, at the office or agency of said Railroad Company in the city of New York on the 1st day of October, A. D. 1996; and to pay interest on the said sum, in like gold coin, semi-annually, at the office or agency of the said Railroad Company in the city of New York, at the rate of five per cent. per annum on the first days of April and October in each year on the pres-

entation and surrender of the respective annexed interest coupons.

This bond is one of a series of bonds of like tenor numbered consecutively from 1 to 1,500 inclusive and amounting in the aggregate to $1,500,000 and the payment of the principal and interest of said bonds is equally secured by and according to the terms of a certain trust deed duly executed, recorded and delivered by said Railroad Company to Central Trust Company of New York, and its successors, as Trustee, bearing date the 1st 93?
day of October, A. D. 1896, conveying to said Trustee by way of Mortgage all the property and franchises of said Railroad Company then existing or thereafter to be acquired.

This bond shall pass by delivery unless registered on the books of the said Railroad Company, in the City of New York, in which event, after proper endorsement of registration hereon, only the coupons shall pass by delivery, and the bond itself shall be payable only to the registered holder or his lawful representative, unless or until released from registry at the request of such registered 933
holder.

This bond shall not be obligatory unless authenticated by the certificate of the Trustee of said mortgage endorsed hereon.

IN WITNESS WHEREOF, Twenty-eighth and and Twenty-ninth Streets Crosstown Railroad Company has caused this bond to be signed by its President and its Treasurer and its cor-

porate seal to be hereto affixed this 1st day of October, A. D. 1896.

TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSSTOWN RAILROAD COMPANY.

By
(Corporate Seal) President.

Attest:
Treasurer."

935 VII. The Coupons attached to the bonds were in the following form:

"(Form of Coupon.'

$25. Coupon No.

Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company will pay to the bearer, at its office or agency in the City of New York, twenty-five dollars in gold coin of the United States of America, on the 1st day of , being six months' inter-
936 est on its first mortgage five per cent. gold bond numbered .

Treasurer."

VIII. The Metropolitan Company and the Twenty-eighth Street Company entered into an agreement under date of September 29, 1896, whereby the Metropolitan Company obtained the right to operate in common with the Twenty-eighth Street Company over the tracks of the latter company.

This agreement contained the following promise by the Metropolitan Company:

> "SECOND: The party of the second part" (the Metropolitan Company) "does hereby agree to and with said party of the first part as follows: * * *
>
> (b) To pay the principal and interest of the first mortgage five per cent. gold bonds of the party of the first part to the amount of One million five hundred thousand ($1,500,000) Dollars, which bonds are for the 938
> sum of One thousand ($1,000) Dollars each and payable, on October 1, 1896, and to pay interest thereon semi-annually at the rate of five (5%) per cent. per annum on the first days of April and October in each year."

The agreement to continue during the corporate existence of the parties.

IX. Bonds of the Twenty-eighth Street Company to the face amount of $1,500,000 were issued and certified under the said mortgage. Each of the bonds was endorsed by the Metropolitan Company 939
as follows:

> "For Value Received, the Metropolitan Street Railway Company hereby guarantees to the Trustee of the within-mentioned mortgage, for the benefit of the holders hereof, punctual payment of the principal of the within bond and the interest thereon at the time and in the manner therein specified and according to the tenor of the several coupons belonging thereto.

"IN WITNESS WHEREOF, the said Metropolitan Street Railway Company has caused its corporate name to be signed hereto by its President or Vice-President, and its corporate seal to be affixed and attested by its Secretary or Assistant Secretary this 1st day of October, 1896.

THE METROPOLITAN STREET RAILWAY COMPANY,

941 By

H. H. Vreeland,

(Corporate Seal) President.

Attest:

Charles E. Warren,

Secretary."

X. By order filed September 24, 1907, in the cause above referred to, wherein the Pennsylvania Steel Company and another are complainants, under a general creditors' bill alleging the insolvency of the New York City Railway Company, Adrian H. Joline and Douglas Robinson were duly ap-
942 pointed receivers of the property of the City Company and duly qualified as such on or about the said date. By order filed October 1, 1907, in the said cause, upon the petition of Metropolitan Street Railway Company, the said Adrian H. Joline and Douglas Robinson were duly appointed receivers of the property of Metropolitan Street Railway Company and on or about that date duly qualified as receivers of said company. By order made and filed October 9, 1907, in the said cause, Adrian H. Joline and Douglas Robinson were duly

continued as receivers of the property of New York City Railway Company and Metropolitan Street Railway Company. The said orders appointing receivers enjoined all persons, including the companies of which the receivers were appointed, respectively, from interfering with the business and properties of said companies. By decretal order filed October 25, 1907, in said cause, New York City Railway Company was adjudged to be insolvent and by decretal order filed November 9, 1907, in the said cause, Metropolitan Street Railway Company was adjudged to be insolvent. 944
By order filed July 27, 1908, in the said cause and three other causes, William W. Ladd was appointed Receiver of New York City Railway Company his appointment to take effect on August 1, 1908. On August 1, 1908, William W. Ladd qualified as Receiver of New York City Railway Company and Adrian H. Joline and Douglas Robinson, as officers of this Court, delivered to him the property of said Company. Since August 1, 1908, William W. Ladd has been acting as receiver of New York City Railway Company and Adrian H. Joline and Douglas Robinson have been acting as receivers of Metropolitan Street Railway Company. 945

XI. The interest coupons maturing April 1, 1908, attached to said bonds of the Twenty-eighth Street Company, were paid by Adrian H. Joline and Douglas Robinson, as officers of this court, on or about that date, but the coupons maturing on October 1, 1907, and subsequently were not and have not been paid.

XII. By order filed August 10, 1908, Adrian H. Joline and Douglas Robinson, as Receivers of the Metropolitan Street Railway Company, were instructed not to adopt the trackage agreement with the Twenty-eighth and Twenty-ninth Streets Company, dated September 29, 1896, and on October 1, 1908, they ceased operating over the lines of the Twenty-eighth and Twenty-ninth Streets Company.

XIII. By order duly made and filed the 28th
947 day of September, 1908, in an action brought by The People of the State of New York against the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company for the dissolution of the defendant company upon the ground that said Company was and for more than a year previous had been insolvent, Joseph B. Mayer, Esquire, was appointed Temporary Receiver of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company.

XIV. Said order was made upon the summons and complaint in said action and upon the voluntary appearance of the defendant by John B.
948 Fiske, its attorney.

XV. The action of The People of the State of New York against Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company is still pending, and assets of the said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company not covered by the mortgage made to the Central Trust Company of New York are still in the hands of Joseph B. Mayer as Receiver.

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XVI. On or about the 2d day of April, 1909, pursuant to the terms and provisions of the mortgage of Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, the Central Trust Company of New York, as trustee, upon the request of a majority of the holders of the bonds under said mortgage, elected, by reason of default in the payment of the interest which accrued October 1st, 1908, and the continuance of the default for a period of six months, that the principal sum secured by the said bonds then outstanding should forthwith become due and payable.

950

XVII. On or about the 12th day of March, 1909, Central Trust Company of New York, as trustee under said Twenty-eighth Street mortgage, began suit in the Supreme Court of the State of New York against the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company as sole defendant to foreclose its said mortgage.

XVIII. By order filed March 20, 1909, in the above entitled cause, upon the petition of Central Trust Company of New York, as trustee under the Twenty-eighth Street mortgage, it was ordered:

951

> "That so much of the prayer of said petition as begs leave to join the Metropolitan Street Railway Company as a party defendant to said foreclosure action be and the same hereby is granted, and Central Trust Company of New York, as Trustee under said mortgage of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company is hereby permitted to join as a

party defendant to said foreclosure action said Metropolitan Street Railway Company. It is further ordered that the claim of the Central Trust Company of New York, as trustee, upon the guaranty of the Metropolitan Street Railway Company, as set forth in the said petition, may be liquidated in the above mentioned foreclosure action."

XIX. Thereafter by supplemental summons and amended complaint the following were made par-
953 ties defendant to the said foreclosure action of Central Trust Company of New York against Twenty-eighth and Twenty-ninth Streets Railway Company, to wit: Joseph B. Mayer, as Receiver of the Twenty-eighth and Twenty-ninth Streets Railway Company, and the Metropolitan Street Railway Company. Said Metropolitan Street Railway Company thereafter served an answer which admitted substantially all the allegations of the complaint and particularly those which alleged the execution by the Metropolitan Street Railway Company of the guaranty of the bonds of the Twenty-eighth and Twenty-ninth Streets
954 Company set forth in Article IX hereof.

XX. The said foreclosure suit of Central Trust Company against Twenty-eighth and Twenty-ninth Streets Company proceeded to judgment, which judgment directed that the property of the Twenty-eighth and Twenty-ninth Streets Company, subject to the mortgage of Central Trust Company, be sold, and that judgment for any deficiency arising upon said sale be entered against the Twenty-eighth and Twenty-ninth Streets Company and Metropolitan Street Railway Company.

XXI. The claim of Central Trust Company of New York, as Trustee under the mortgage of Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company against Metropolitan Street Railway Company was filed with William L. Turner, Esquire, Special Master, on April 21st, 1909.

XXII. On January 4, 1912, the property of the Twenty-eighth Street Company, subject to the mortgage, was sold for $50,000. The expenses of the sale amounted to $7,759.98, and the balance, 956
amounting to $42,240.02, was credited on the amount found due under the mortgage on February 20, 1912, and a deficiency judgment was duly entered against Metropolitan Street Railway Company and the Twenty-eighth and Twenty-ninth Streets Company for $1,745,344.21 pursuant to the judgment aforesaid. In computing the amount of this deficiency judgment interest to the date of sale was allowed on the bonds.

XXIII. By various intermediate orders made in this cause the time of the Central Trust Company to file a certified copy of the deficiency judg-
ment pursuant to the order of March 20, 1909, was 957
extended to and including January 30, 1912.

XXIV. A transcript of said deficiency judgment in said foreclosure suit was filed with William L. Turner, Esq., Special Master, on January 23, 1912, within the time prescribed by said order.

XXV. By order of the District Court of the United States for the Southern District of New York, entered upon the petition of the New York

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Railways Company, verified the 30th day of December, 1912, it was

"ORDERED that the order filed March 20th, 1909, as amended by order filed August 3rd, 1911, allowing the Central Trust Company, as Trustee under a mortgage of the Twenty-eighth and Twenty-ninth Streets Railroad Company to file a claim against the Metropolitan Street Railway Company and the orders extending the time for the
959 filing of said claim, filed respectively October 23d, 1911, and January 12th, 1912, be and the same hereby are amended so as to provide that the claim of the Central Trust Company of New York, as Trustee under the mortgage of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company or the deficiency judgment filed pursuant to said orders be considered filed with the Special Master as of January 15th, 1908."

XXVI. On January 1st, 1908, the liabilities of
960 of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company were in excess of its assets.

CONCLUSIONS OF LAW:

FIRST. The order of March 20, 1909, permitting Central Trust Company to join Metropolitan Street Railway Company as a party defendant to its foreclosure suit against the Twenty-eighth and Twenty-ninth Streets Company, was not an adjudication that Central Trust Company had a claim

against Metropolitan Street Railway Company provable in this proceeding.

SECOND. The judgment entered in said foreclosure suit against Metropolitan Street Railway Company is not conclusive upon the Special Master as to any of the matters therein adjudicated.

THIRD. Pursuant to the provisions of the mortgage of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company to Central Trust Company of New York, as Trustee, the principal sum secured by the bonds outstanding under said mortgage became due and payable on or about the 21st day of April, 1909, by the action of a majority of the holders of the bonds outstanding under said mortgage in notifying the Trustee that they elected to declare such principal due by reason of the default in the payment of the interest which accrued on October 1st, 1908, and which continued for a period of six months. 962

FOURTH. The Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company was on the 28th day of September, 1908, and has been and has remained and now is insolvent and its assets are in the hands of a Receiver appointed in Insolvency Proceedings. 963

FIFTH. The liability of the Metropolitan Street Railway Company upon the said bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Company was, until said mortgaged property had been sold and its proceeds applied to the payment of said bonds, contingent merely and not

provable in the proceeding against the estate of the Metropolitan Street Railway Company.

SIXTH. The cliam upon the said bonds being contingent on January 15th, 1908, the subsequent sale of the mortgaged property and the application of its proceeds to the payment of the bonds does not make the claim provable in this proceeding.

SEVENTH. The claim of this claimant herein against the estate in the possession of the Receivers of Metropolitan Street Railway Company
965 should be dismissed as not provable in a class with fixed obligations.

The supplemental testimony taken before me consisting of 26 typewritten pages, together with my opinion herein, are herewith filed.

Dated, New York, July 2, 1913.

Respectfully submitted,

WILLIAM L. TURNER,
Special Master.

966

Defendants' Exhibit 109.

NEW YORK RAILWAYS COMPANY STOCKHOLDERS.

Feb. 16, 1915, 3 P. M.

Permanent List.	Shares.	
Allen, Wm. L., 81 North Moore St., N. Y. City,	25	
Ayers, Harry F., c/o Farmers Loan & Trust Co., New York,	50	968
Allen, Martin S., 52 So. Oxford St., Brooklyn, N. Y.,	31	
Allen, Z. Nelson, 52 So. Oxford St., Brooklyn, N. Y.,	31	
Aron, Morris, 285 Fifth Ave., N. Y. City,	30	
Allison, Mrs. Jennie L., 117 N. 33d St., Phila., Pa.,	4	
Ayers, Mary McF., 1 Rector St., Metuchen, N. J.,	3	
Arnold, J. Henry, 3010 Bainbridge St., N. Y. City,	15	
Anderson, William C., 60 Broadway, N. Y. City,	25	
Allen, Addison Lafin, 81 N. Moore St., N. Y. City,	3	969
Allen, Helen Lafin, 81 N. Moore St., N. Y. City,	2	
Blum, Isaac, P. O. Box 105 Cedarhurst, L. I.,	71	
Boody, McLellan & Co., 111 Broadway, N. Y. City,	200	
Baugh, Grace H., Revill, Md.,	10	
Benedict, Drysdale & Co., 7 Wall St., N. Y. City,	15	

Berner, C. E., 115 Broadway, N. Y. City, 4
Block, Henry, 25 Broad St., N. Y. City, 10
Bioren & Co., 314 Chestnut St., Philadelphia, Pa., 255
Bennett, Arthur J., 28 School St., Room 68, Boston, 12
Benjamin, Morris, 144 W. 139th St., N. Y. City, 18
Block, Leon, c/o P. J. Goodhart & Co., N. Y. City, 31
Barnes, Albert J., 90 West St., N. Y. City, 30
971 Bache, J. S. & Co., N. Y. City, 258
Blum, Edward, 59 W. 109th St., N. Y. City, 31
Beadleston, Alfred N., 291 W. 10th St., N. Y. City, 300
Bantonyi, Johanna, Hotel Vouillemont, 15 Rue d'Anglas, Paris, France, 61
Blatter, Titus, 890 Broadway, N. Y. City, 9
Barron, Elizabeth H., 320 W. 77th St., N. Y. City, 3
Barrett, E. H., 222 Riverside Drive, N. Y. City, 32
Behrens, Louise T., 57 Worth St., N. Y. City, 71
Beekman, Charles, 26 W. 17th St., N. Y. City, 62
972 Banks, Mary I., Fidelity Trust Co., Philadelphia, Pa., 30
Butler, Edgar H., c/o Graham & Co., 435 Chestnut St., Philadelphia, Pa., 30
Bixby, Ida E., 7904 Ridge Building, Brooklyn, N. Y., 2
Brooklyn Trust Co., Trustees u/w of John C. Schenck, 177 Montague St., Brooklyn, N. Y., 30
Barnett, Morris S., 27 Spruce St., N. Y. City, 30

NEW YORK RAILWAYS COMPANY, et al. 973

Bankers Trust Company, Trustee, 14 Wall St., N. Y., 152,701

Caldwell, Florence F., c/o Fidelity Trust Co., Phila., Pa., 17

Carter, Trustees for Wm. E., c/o Fidelity Trust Co., Phila., Pa., 48

Carter, Katherine, c/o Fidelity Trust Co., Phila., Pa., 38

Cohen Bros., 143 Greene St., N. Y. City, 557

Clark, Childs Co., 111 Broadway, N. Y. City, 30

Cottier, Alonzo E., c/o Farmers Loan & Trust Co., N. Y., 200 974

Connell, Patrick D., 678 10th Ave., N. Y. City, 6

Cobb, John C., 60 State St., Boston, Mass., 100

Connolly, Michael P., 232 48th St., N. Y. City, 22

Cushing, William H., 65 Broad St., N. Y. City, 3

Coleman, John D., 670 Tenth Street, Brooklyn, N. Y., 155

Coles, J. Ackerman, c/o Ladd & Wood, 7 Wall St., N. Y., 24

Cronin, Grover J., Moody St., Waltham, Mass., 6 975

Crimins, John D., 624 Madison Ave., N. Y. City, 4

Chambers, Donald I., 24 Charlotte St., Sydney, N. S., Can., 3

Cohen, A., c/o Groos National Bank, San Antonio, Texas, 31

Dorwart, Mrs. Grace S., c/o Bankers Trust Co., 16 Wall St., N. Y. City, 10

DeHaven & Townsend, 40 Wall St., N. Y. City, 463
Disbrow, Benjamin N., c/o 5th Ave. Bank., N. Y. City, 100
Duxbury, Alfred W., 260 W. Broadway, c/o American Thread Co., N. Y. City, 2
Dunston, John, 761 Sixth Ave., N. Y. City, 140
Day, Frank A., 35 Congress St., Boston, Mass., 210
Dow, Edmund LeRoy, 49 W. 57th St., N. Y. City, 6
977 Dougherty, John W., c/o Mellen Bank, Pittsburgh, Pa., 15
Day, R. L. & Co., 35 Congress St., Boston, Mass., 75
Dannenberg, Simon J., 20 Broad St., N. Y. City, 16
Delaney, Margaret Aloysis, 163 East 45th St., N. Y. City, 47
Daboll, Charles E., Memphis, N. Y., 3
Davis, J. W. & Co., 100 Broadway, N. Y. City, 50
Dannenberg, Maurice J., 20 Broad St., N. Y. City, 16
978 Degener, John F., 354 4th Ave., N. Y. City, 1
Darling, Minnie M., Ocean Avenue, Deal, N. J., 82
Darling, Thomas S., 230 St. James St., Montreal, Can., 10

Elerson, Sallie D., 24 Walnut St., Philadelphia, Pa., 30
Eisenman, Charles, c/o Guardian Svg. & Trust Co., Cleveland, Ohio, 30
Emerson, Estate of E. O., Titusville, Pa., 1

Eakins, John S., c/o Manufacturers Bank, Broadway, Brooklyn, N. Y., 31
Emory, Freed & Co., Philadelphia, Pa., 100
Ettelson, Henry, 63 Broad St., N. Y. City, 123
Elmer, Herbert C., 425 Wyckoff Ave., Ithaca, N. Y., 2
Edwards, Susan C., c/o Duncan Edwards, 31 Nassau St., N. Y. City, 7

Fowler, Mrs. Edith K., P. O. Box 428, Willits, Cal., 10
Fidelity Trust Co. & Edward H. Morris, 980
Trustees for Lilla F. Jones u/w of John Lang, dec., Phila., Pa., 15
Fidelity Trust Co. & Edward H. Morris, trustees for Francis W. Lang u/w of John Lang, dec., Phila., Pa., 15
Fidelity Trust Co., Hunter Brooke and E. Eldridge Pennock, Trustees for Florence Brooks Deacon and Francis M. Brooke, deceased, Philadelphia, Pa., 82
Fidelity Trust Co., and Wayne MacVeigh, Trustees for Helen C. Leidy, u/w of Wm. T. Carter, deceased, Philadelphia, Pa., 75
981
Fidelity Trust Co., Philadelphia, Pa., 80
Frananthal, Isaac C., 783 Lexington Ave., N. Y. City, 46
Frank, Solomon, 1407 Eutaw Place, Baltimore, Md., 30
Furness, Walter Rogers, c/o Parris & Co., 1500 Walnut St., Philadelphia, Pa., 25
Fidelity Trust Co., Alice G. Brock and Mary K. Gibson, Trustees u/w of Mary K. Gibson, dec., Phila., Pa., 504

Fidelity Trust Co., Alice G. Brock, Trustees for Alice G. Brock u/w of Henry C. Gibson, dec., Phila., Pa., 336

Fidelity Trust Co., Alice G. Brock and Mary K. Gibson, Trustees for Mary K. Gibson u/w of Henry C. Gibson, dec., Philadelphia, Pa., 336

Farnum, Isabella T., 4427 Chestnut St., Phila., Pa., 15

Fidelity Trust Co., Trustee for Amanda Ellen Gross u/w of Geo. J. Gross, dec.,
983 Philadelphia, Pa., 22

Gerry, Mathilde T., 258 Broadway, N. Y. City, 14

Grote, Alice, c/o U. S. Trust Co., N. Y. City, 65

Goldman, Alfred L., 42 Broadway, N. Y. City, 3

Gibson, Henry C., 112

Gray, William S., 76 William St., N. Y. City, 30

Goldwater, Henry, 182 Avenue C., N. Y. City, 31

984 Graham, Mrs. Sarah F., c/o Edey, Field & Sloan, 74 Broadway, N. Y. City, 3

Griffin, Nicholas J., Jr., 3509 Baring St., Phila., Pa., 153

Gade, William H. F., 349 Broome St., N. Y. City, 30

Hallock, Mrs. Sarah N., 291 W. 10th Street, c/o Beadleston & Woerz, N. Y. City, 10

Hopkins, Est. of Edward M., Fidelity Trust Co., Phila., Pa., 73

Holland, James L., 225 W. 78th Street, N. Y. City, 62
Hoffman, John W., c/o C. I. Hudson & Co., 36 Wall St., N. Y., 3
Horton, Eugene, P. O. Box 103, N. Y. City, 92
Horton, Mrs. Elizabeth A., Box 30, Middletown, N. Y., 92
Hallgarten & Co., 5 Nassau St., N. Y. City, 150
Henry, Mary G., Philadelphia, Pa., 112
Hasson, Wm., c/o First National Bank, Oil City, Pa., 63
Halstead & Hodges, 14 Wall St., N. Y. City, 928 986
Housman, A. A. & Co., N. Y. City, 30
Halle & Stieglitz, N. Y. City, 15
Huegle, Katherine, 2532 W. Lehigh Ave., Phila., Pa., 61
Herzfeld & Stern, N. Y. City, 74
Harper, Clarence L., Stock Exchange Building, Phila., Pa., 4
Hardy, Lucy H., 518 Stockley Gardens, Norfolk, Va., 50
Hubbard, Samuel T., 66 Beaver St., N. Y. City, 62
Hornthal, Est. of L. M., Julius M. Lowenstein, 149 Broadway, New York City, 31 987
Irwin, Louis H., 44 Court St., Brooklyn, N. Y. 23
Irwin, Henry, do. 62
Ingraham, George E., Enfield, Conn. 7

Johnson, Mary, c/o Fidelity Trust Co. of Phila., Pa. 10
Jones, Charles J., 1507 Locust St., Phila., Pa. 452
Johnson, Lindley, Fidelity Trust Co., do. 9

Kimball, R. J. & Co., 5 Nassau St., N. Y. City 1100
Kenyon, John W., c/o First Nat. Bank, Binghamton, N. Y. 12
Knapp, Harry K., 30 Broad St., N. Y. City 23
Koechlein, Fred E., c/o C. D. Barney & Co., 25 Broad St., N. Y. 185
Kerr, Harrison D., c/o Fifth Ave. Bank, N. Y. City 41
King, Mrs. Annie L., 615 Dallas Ave., Houston, Texas 24
989 King, John D., 6 Strawberry St., Phila., Pa. 30
King, William Oliver, 615 Dallas Ave., Houston, Texas 10
Kent, Charles I., 917 Washington St., Wilmington, Del. 20
Keil, Frieda M., 664 57th St., Brooklyn, N. Y. 2
Kelly, George W., 941 North 8th St., Phila., Pa. 192
Kelly, Mary J., do. 10
Knauth, Nachod & Kuhne, 13 William St., N. Y. City 6
Lee, Lillie, 1018 No. Charles St., Baltimore, Md. 10
990 Lawrence, Effingham & Co., 111 Broadway, N. Y. City 145
Leaming, Julia, c/o Roberts, Montgomery & McKeehan, West End Trust Co., Phila., Pa., 24
Lane, David H., c/o Land Title & Trust Co., Phila., Pa., 185
Lockwood, F. M. & Co., 52 Broadway, N. Y. City 143
Langzettel, Mrs. Hattie E. N., 135 N. Cliff St., Ansonia, Ct. 3
Lowitz, R. M., 24 Pine St., N. Y. City 11

Lawrence, Cyrus J. & Sons, 15 Wall St., N. Y. City 200
Lindencrone, Lillie de Hagerman, c/o R. F. Herrick, 84 State Street, Boston, Mass. 7
Lawler, Edward, 317 Noxon St., Syracuse, N. Y. 3
Lang, Florence O. R. 30
Lubell, A. P., 452 Broadway, N. Y. City 7
Lowenstein, M., 9 Wall St., N. Y. City 16

Mabon & Co., 45 Wall Street, N. Y. City 761
Munnikhuysen, Bessie A., 1018 N. Charles St., Baltimore, Md. 16 992
Munnikhuysen, Bessie P., do. 10
Morris, John F., 1032 Prudential Bldg., Buffalo, N. Y. 6
Maas, William, 31 W. 21st St., N. Y. City 123
Munro, Mrs. Florence D., 92 Philbeach Garden, London, S. W., England 10
Manice, E. A. & Co., 3 Broad St., N. Y. City 10
Manson & Co., Thomas L., 100 Broadway, N. Y. City 190
Merwin, Edward P. & Grace M. Colby, 390 West End Ave., N. Y. C. 124
March, James E., 231 Lafayette St., N. Y. City 46 993
Mindlesohn, Isaac, 117 East 24th St., N. Y. City 9
Merchants Union Trust Co., 715 Chestnut St., Phila., Pa. 31
Montgomery, Clothier & Tyler, Philadelphia, Pa. 200
Morgan, Major R., Foxburg, Pa. 7
Morrow, Catherine L., c/o Lyon, Gary & Co., 140 So. Dearborn St., Chicago, Ill. 31

McCrum, Leslie M., c/o Farmers Loan & Trust Co., N. Y. C. 154
MacCracken, Edith C., 15 E. 83rd St., N. Y. City 4
MacCay, Grace D., 2104 Beverly Road, Brooklyn, N. Y. 2

Noll, Frederick, 213 Montague St., Brooklyn,, N. Y. 3
Newborg & Co., 60 Broadway, N. Y. City 214

995 Oil City Hospital, Oil City, Pa. 15

Pendergast, Virginia B., Lock Box 19, Tenafly, N. J. 10
Pell & Co., S. H. P., 43 Exchange Place, N. Y. City 1
Pennington, Louis, 22 Washington Pl., Newark, N. J. 6
Pepper, John W., Trustee u. d. t. Adeline P. Marshall, Phila., Pa. 112
Pouch, Fred H., and Alonzo B. Pouch, exrs. Est. of A. J. Pouch, 24 State Street, N. Y. City 30
996 Philadelphia Trust Safe Deposit & Insurance Co., Trustee u/w of Leopold Bamberger, dec., 415 Chestnut St., Philadelphia, Pa. 46

Rosenshine, Albert A., 54 W. 21st St., N. Y. City 278
Rieder, Joseph, 128 Market St., Philadelphia, Pa. 100
Rosenbaum, Est. of A. S., c/o Seligberg & Co., 71 Bway, N. Y. C. 10

Raffloer, Miss Millie, 199 Kurpustendam, Berlin W., Ger. 70
Rafel, Frank E., P. O. Box 355, West End, N. J. 6
Rothfeld, Est. of Sol., 25 Broad St., N. Y. City 36
Rosenbaum, Sig., c/o Sternberg Sinn & Co., 172 5th Ave., N. Y. C. 5
Ripka, Mrs. Laura T., c/o R. R. Herrick, 84 State St., Boston 8
Raymond, Daniel V. 12
Roberts, Est. of Geo. B., 1438 Land Title Bldg., Phila., Pa. 31 998
Robson, Chas. Stuart, 2179 Ocean Ave., Brooklyn, N. Y. 1
Rupprich, August, c/o Citizens Svg. Bank, 56 Bowery, N. Y. City 3
Rutherford, John A. & Co., 20 Broad St., N. Y. City 15
Remick, Hodges & Co., 14 Wall St., N. Y. City 97
Randolph, E. & Co., 111 Broadway, N. Y. City 58
Rice, Harold M., 663 Tenth St., Brooklyn, N. Y. 5 999

Smith, E. Eldridge, 71 Broadway, N. Y. City 59
Smith, Erskine M., do. 57
Smith, E. Eldridge and E. Eldridge Pennock, Trustees, 404 Bourse Bldg., Philadelphia, Pa. 115
Seward, John L., 415 Main St., Orange, N. J. 31
Sternberger, Sinn & Co., 60 Broadway, N. Y. City 309

See, Raymond H., c/o Farmers Loan & Trust Co., N. Y. City 61
Stoddard, Caswell W., 44 Court Street, Brooklyn, N. Y. 31
Samson, William W., 2129 No. 22nd St., Phila., Pa. 125
Sidenbach, Henry, 588 Drexel Bldg., Phila, Pa. 155
Spears, James W., Canton, N. Y. 31
Shannon, Alfred P., and West End Trust Co., Exrs. of the Last Will and Testa.
1001 of Jacob Shannon, dec., c/o West End Trust Co., Philadelphia, Pa. 15
Stern, Rosalie I., 1867 Seventh Ave., N. Y. City 6
Schweinberg, Emil, c/o Scholle Bros., N. Y. City 60
Streeter, Milford B., 113 Hooper St., Brooklyn, N. Y. 31
Studley, Lester L., c/o F. L. Milliken & Co., 15 State St., Boston, Mass. 12
Sartorius, Otto, 136 Water St., N. Y. City 309
Seaman, Miss Sara Louise, c/o W. A. Read & Co., N. Y. City 4
1002 Sack, A. Albert, c/o Redmond & Co., 33 Pine St., N. Y. City 100
Sartorius, A., 20 Broad St., N. Y. City 15
Schott, Jr. & Co., Chas M., 25 Broad St., N. Y. City 9
Schulze, Herman, 1461 Amsterdam Ave., N. Y. City 3
Shary, Michael F., c/o Natl. Textile Mfg. Co., Cohoes, N. Y. 18
Segalla, May B., 277 Windsor Ave., Hartford, Conn. 43

Swartwout & Appenzeller, 44 Pine St., N. Y. City 169
Story, Martense B., Atlantic Dock Co., Brooklyn, N. Y. 30

Trask, Mary C., and Alice M. Bolville, 140 W. 46th St., N. Y. 3
Thomason, Mary Lowber, c/o Chandler Bros & Co., N. Y. City 618
Tripler, Edward L., 407 Fulton St., Brooklyn, N. Y. 18
Tuttle, Mary E., 1680 Woodhaven Ave., Woodhaven, L. I. 7 1004
Treadwell, Harry H. 3
The Land Title & Trust So., surv. Trustees u/w of George T. Barnes, dec., Philadelphia, Pa. 185
The Penna. Co. for Ins. on Lives & Granting Annuities, Philadelphia, Pa. 93
Tompkins, W. L., 2 Water St., N. Y. City 1
Tieleke, Frederick, Jr., 710 DeGraw St., Brooklyn, N. Y. 3
Tieleke, Gertrude E. H., do. 2
Tieleke, Adelaide G., do. 2
Tieleke, Katherine M.., do. 2 1005
Tappan, Paul, 26 Browne St., Brookline, Mass. 46
Tappan, Ella C., Gloucester, Mass. 46
The Provident Life & Trust Co. of Philadelphia, Trustee u/d of Francoise F. H. Bullock, 4th & Chestnut St., Phila., Pa. 15

Vaughan, & Co., 45 Broadway, N. Y. City 2
Vreeland, H. H., 165 Broadway, N. Y. City 64

	Van Bergen, Harry A., c/o U. S. Trust Co., N. Y. City	65
	Van Bergen, Chas., do.	65
	Van Derlyn, C. A., 36 Wall St., N. Y. City	15
	Van Derlyn, J. D., 116 E. 71st St., N. Y. City	7
	Wynne, Mary T., 452 W. 141st St., N. Y. City	1
	White, W. A. & A. M., 14 Wall St., N. Y. City	30
1007	Welsh, Helen B., c/o Fidelity Tr. Co. of Phila., Pa.	26
	Whitin, Isabelle S., 501 W. 113th St., N. Y. City	15
	Woerz, Ernest G. W., 291 W. 10th St., N. Y. City	200
	Weill, Louis W., 627 8th Ave., N. Y. City	50
	Wood, Wm., 22nd & Spring Garden Sts., Phila., Pa.	371
	Wheelock, William E., c/o Guaranty Tr. Co., 5th Ave., Br., N. Y. C.	15
	Wyeth, Stuart, Washington Ave. & 11th St., Phila, Pa.,	30
1008	Wentz, Mary D., Fidelity Tr. Co. of Phila., Pa.	6
	Wilson, Louise S., Norton Heights, Conn.	5
	Wacker, Harry, 349 Broome St., N. Y. City	16
	Weil, Lottie C., c/o Sullivan & Cromwell, N. Y. City, 49 Wall Street	15
	Yates, Franklin, Ancon, Panama	1
	Total	171,032

NEW YORK RAILWAYS COMPANY, et al. 1009

Defendant's Exhibit 112.

AMENDED PLAN AND AGREEMENT

FOR THE

REORGANIZATION AND READJUSTMENT

OF

TWENTY-EIGHTH AND TWENTY-NINTH STREETS CROSSTOWN RAILROAD COMPANY. 1010

John W. Hamer,
Chairman.

Horace A. Doan,
A. Merritt Taylor,
Wm. C. Heppenheimer,
Charles E. Loxley,
Bondholders' Committee.

Central Trust Company,
54 Wall Street, New York City, 1011
Depositary.

A. S. Gilbert,
43 Exchange Place,
New York City,
Counsel.

1012 JOHN W. HAMER, et al. *vs.*

Amended Plan and Agreement for the Reorganization and Readjustment of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company.

INTRODUCTION.

Under date of December 11th, 1911, a Plan and Agreement of Reorganization and Readjustment was submitted to the bondholders of the Twenty-eighth and Twenty-ninth Streets Crosstown Rail-
1013 road Company (hereinafter referred to as Crosstown Company) by the Bondholders' Committee which provided, among other things, for the purchase at foreclosure sale of the property of the Crosstown Company by the Bondholders' Committee, for the formation of a new corporation to acquire the same, for the issuance of certain stock and bonds by the new corporation, thus to be formed, in payment for said property, and for the sale of such stock and bonds and of the bonds of the Crosstown Company deposited with the Bondholders' Committee to the Third Avenue Railway Company, pursuant to an arrangement
1014 between the Bondholders' Committee and the Third Avenue Railway Company dated the 9th day of February, 1911.

Pursuant to such Plan and Agreement, the Bondholders' Committee did purchase the said road and subsequently thereto did organize a new corporation known as the Mid-Crosstown Railway Company, Inc., and did apply to the Public Service Commission for leave to issue the stock and bonds required by the Third Avenue Railway Company in order to complete the arrange-

ment made with it under date of February 9th, 1911. At the same time the Third Avenue Railway Company applied to the Public Service Commission for leave to consummate the transaction. A number of hearings were had by the Public Service Commission in the City of New York, on both of these applications, as a result of which the applications were denied.

Subsequently negotiations were had with the Third Avenue Railway Company, as a result of which the Third Avenue Railway Company offered to buy from the Bondholders' Committee 1016
such stock and bonds as the public Service Commission might authorize the Mid-Crosstown Railway Company to issue and in whatever amount, and to pay therefor $500,000 par value of the First Refunding Mortgage 4% bonds of the Third Avenue Railway Company which, at the time the offer was made, were selling in the open market at about 80% of par, or the proceeds of said bonds; the property to be delivered to the Third Avenue Railway Company free and clear of encumbrances, debts and claims of every character, which meant that out of the purchase price it would be necessary for the Bondholders' Committee 1017
to pay and discharge all accumulated taxes, paving claims and other liens, debts and charges on the road as well as to pay and discharge the debts of the Committee, including expenses of counsel, depositaries and the like. This offer was accepted by the Bondholders' Committee subject to the approval of the Public Service Commission and the depositing bondholders. The Bondholders' Committee deemed it wise to first obtain the approval of the Public Service Commission before submitting the matter to the depositing bond-

holders. Accordingly, the Mid-Crosstown Railway Company, Inc., applied to the Public Service Commission for leave to issue securities in such amount as the Commission should deem proper, and the Third Avenue Railway Company applied to the Public Service Commission for leave to purchase the same for the said consideration of $500,000 par value of its bonds or the proceeds thereof. The Public Service Commission, however, after hearings had been held, informally announced that it would only permit the Mid-Cross-
1019 town Railway Company to issue approximately $150,000 capital stock, which it deemed to be the full value of the property free from all liens and claims; and would only authorize the Third Avenue Railway Company to issue an amount of its bonds sufficient when taken at 80% of their face value to pay for said stock.

Further negotiations were then undertaken, as a result of which the Third Avenue Railway Company offered to pay for said $150,000 par value of stock of the Mid-Crosstown Railway Company as follows: $150,000 par value First Refunding Mortgage 4% bonds of the Third Avenue Railway
1020 Company, and its promissory note for $250,000 bearing interest at 4%, payable within one year, subject, however, to two renewals on being reduced one-third each year, and to pay to the Receiver and Counsel to the Receiver and the Committee $30,000 in bonds or $30,000 cash (a detail which has not yet been settled) for or on account of their compensation.

This offer likewise represents approximately $400,000, but postpones the payment of $250,000 thereof for three years, one-third thereof being payable each year. The Committee accepted the

offer, and the matter was again submitted to the Public Service Commission in the amended form.

By order dated January 23rd, 1914, the Public Service Commission authorized the Mid-Crosstown Railway Company, Inc., to issue capital stock in the sum of $150,000 in payment for all the franchises, tracks and other rights and property of the Crosstown Company, free from all liens, charges and claims, so that the Mid-Crosstown Company should have no liabilities whatsoever except said $150,000 capital stock. By order bearing the same date the Commission authorized 1022
the Third Avenue Railway Company to issue for the acquisition of said stock $187,000 par value of its said 4% bonds. Under the agreement with the Third Avenue Railway Company $37,000 par value of these bonds, or so many as may be necessary, will be used to pay the amount which shall hereafter be decided to be payable by the Third Avenue Railway Company to the Receiver and the Counsel to the Receiver and Committe for or on account of their compensation ($30,000 in cash or $30,000 in bonds as may hereafter be determined); and so much of the $150,000 par value of the bonds will be sold and the proceeds ap- 1023
plied to or towards the payment of the liens and charges on the claims against the railroad property, and the debts and obligations of the Receiver and the Mid-Crosstown Railway Company, Inc., and the Committee, and such part of the compensation of the Receiver and Counsel as shall not be paid by the Third Avenue Railway Company; and any residue of the bonds or their proceeds will be distributed *pro rata* among the depositing bondholders; and the balance of the purchase price will be received in the form of

a promissory note of the Third Avenue Railway Company for $250,000 payable within one year from its date, with the right, upon its maturity, to give a renewal note for $166,666.66 payable in one year from the date thereof, and with the right, upon the maturity of the last mentioned note, to give a renewal note for $83,333.33 payable in one year after the date thereof, all three of said notes to bear interest at the rate of 4% per annum.

The claims which are to be paid by the Committee out of the proceeds of the $150,000 bonds received by it amount, at their face value with interest and penalties to July 1, 1913, to approximately $106,620.64; but it is impossible to tell at the present time how much money will be required to satisfy them, because some of them are of doubtful validity and it is anticipated that considerable reduction can be obtained on many of them.

1025

In view of the terms of the agreement of December 11th, 1911, heretofore submitted to the depositing bondholders, it is necessary to have your consent to this amendment to that agreement, which we hope will be granted. The Bondholders' Committee have no hesitation in saying that it is absolutely the best result that can be obtained in the interest of depositing bondholders.

1026

Dated, February 16th, 1914.

JOHN W. HAMER,
Chairman.
HORACE A. DOAN,
A. MERRITT TAYLOR,
WM. C. HEPPENHEIMER,
CHARLES E. LOXLEY.

NEW YORK RAILWAYS COMPANY, et al. 1027

AGREEMENT made as of the 16th day of February, 1914, between John W. Hamer, Horace A. Doan, A. Merritt Taylor, W. C. Heppenheimer and Charles E. Loxley, a Committee constituted pursuant to an agreement dated July 22nd, 1908, for the protection of holders of First Mortgage Five Per Cent. Gold Bonds of the Twenty-eighth & Twenty-ninth Streets Crosstown Railroad Company (hereinafter called "Crosstown Road"), parties of the first part, and the holders of certificates of deposit issued to bondholders who have deposited their bonds under said agreement 1028
and now are parties thereto under said agreement and now are parties thereto, party of the second part.

WHEREAS, on or about the 11th day of December, 1911, the parties of the first part submitted to the parties of the second part a Plan and Agreement for the reorganization and readjustment of the Crosstown Road, which said Plan and Agreement were duly published in accordance with the provisions of the Bondholders' Agreement of July 22nd, 1908, and which Plan and Agreement of Reorganization became effective 1029
by the failure of any depositing bondholder to dissent therefrom within twenty days after the deposit of such Plan and Agreement of Reorganization; and

WHEREAS, the Committee, as a purchasing Committee, did purchase the property of the Crosstown Road in accordance therewith, and did reorganize under the title of Mid-Crosstown Railway Company, Inc. (hereinafter called the Mid-Crosstown Company); and

WHEREAS, the Mid-Crosstown Company, under the direction of the Committee, did apply to the Public Service Commission of the State of New York, for the First District, for the issuance of the securities provided in said Plan and Agreement of Reorganization; and

WHEREAS, the Third Avenue Railway Company applied to the said Public Service Commission for leave to purchase said securities pursuant to the arrangement between the Committee and the
1031 Third Avenue Railway Company dated February 9th, 1911, which agreement was made part of said Plan and Agreement of Reorganization; and

WHEREAS, the said Public Service Commission denied both of said applications; and

WHEREAS, the said Third Avenue Railway Company has since offered to purchase such securities of the said Mid-Crosstown Company, as said Public Service Commission should authorize, free and clear of all encumbrances on the property of the said Mid-Crosstown Company, for $150,000 par value of the First Refunding Mortgage
1032 4% bonds of the Third Avenue Railway Company; and the sum of $250,000 payable by its note maturing within one year from the date thereof, bearing interest at 4% per annum with an agreement, however, that the note may be renewed at its maturity for another year upon being reduced to the extent of one-third, and that the renewal note may again be renewed for one year from its date upon being reduced to the extent of one-half; and also $30,000 in cash or $30,000 in like bonds (as shall hereafter be determined) for or

on account of the compensation of the Receiver and of the Counsel to the Receiver and Committee; and

WHEREAS, the Public Service Commission has authorized the Mid-Crosstown Company to issue its common capital stock in the sum of $150,000, and has authorized the Third Avenue Railway Company to purchase said stock and to issue for the purchase thereof $187,000 par value of said bonds of the Third Avenue Railway Company.

NOW THEREFORE, it is agreed by and between 1034
the parties hereto that the said Plan and Agreement of Reorganization dated December 11th, 1911, be and the same hereby is modified and amended in the following respects:

FIRST: That for the price or consideration of $150,000 par value of the common capital stock of the Mid-Crosstown Company, the Bondholders' Committee are hereby authorized and empowered to sell, grant, convey, transfer, assign, release and deliver to the Mid-Crosstown Company, all the railroads, rights, privileges and franchises and all other property of every kind and description 1035
(save only the claims and rights of action now in suit against the New York Railways Company, and the Metropolitan Traction Company and certain persons who were at one time directors of the Metropolitan Traction Company and their personal representatives), which were purchased by the Bondholders' Committee at foreclosure sale and conveyed to them by deed of Newell Martin, Referee, dated January 22, 1912, and all other property of like nature and description thereafter acquired by them, all of such

property to be so conveyed to the Mid-Crosstown Company free from all liens, charges, debts and claims of every character and description, so that when so conveyed, the Mid-Crosstown Company shall have no liabilities whatsoever except said $150,000 of capital stock.

SECOND: The Committee are hereby authorized and empowered to sell, transfer, set over and deliver to the Third Avenue Railway Company the said $150,0000 par value of the capital stock of
1037 the Mid-Crosstown Company so received by them, in consideration of $150,000 par value of the First Refunding Mortgage 4% bonds of the Third Ave-Railway Company, or the proceeds of the sale thereof, and the sum of $250,000 payable by its promissory note due within one year from date thereof, bearing interest at 4% per annum, with agreement, however, that the note may, at the option of the Third Avenue Railway Company or its successors, be renewed at its maturity for another year upon being reduced to the extent of one-third, and that the renewal note may again be renewed for one year from its date upon being
1038 reduced to the extent of one-half; and are also authorized and empowered to convert said bonds into cash and to apply the proceeds thereof as follows: First, to the payment and discharge of all liens, encumbrances, charges and claims upon or against the property so to be conveyed to the Mid-Crosstown Company, and all debts and obligations of, and claims against the Mid-Crosstown Company, or its property, or its stock, and all debts and obligations of Joseph B. Mayer as Receiver of the Crosstown Company, and all ex-

penses and obligations of the Company, except such part (if any) of the compensation and disbursements of the said Receiver and Counsel to said Receiver and Committee as shall be paid by the Third Avenue Railway Company; and, second, to ratably distribute the balance of such proceeds so received by the Committee to the depositing bondholders, and the proceeds of said note and interest if and when received.

And when the pending actions against the Metropolitan Traction Company and the persons who were at one time Directors of the Metropolitan 1040
Traction Company and the personal representatives of any of such persons, and the New York Railways Company shall have been finally terminated and the Committee shall have received said $150,000 par value First Refunding Mortgage Four Per Cent. Bonds and full payment of the $250,000 note and interest thereon, the Committee shall assign, transfer and deliver to the Mid-Crosstown Railway Company or its nominee, all First Mortgage Five Per Cent. Gold Bonds of the Crosstown Company deposited with or acquired by the Committee, and all unpaid coupons appertaining thereto. It being distinctly under- 1041
stood and agreed, however, that it is not intended hereby to presently pass any title or beneficial interest to said Crosstown Bonds, or any guarantee thereof, judgment thereon or other agreement relating thereto; that the ownership of said bonds and rights with reference thereto shall be and remain in the Committee; that all claims, actions and causes of action, on account of such Crosstown bonds or their guarantee, or the judgment thereon, or other agreement relating

thereto, and the proceeds of any such claims, actions and causes of action shall be and remain the property of the Committee; that the intent of this provision is only that if and when the Committee shall have exhausted all rights and remedies on account of said bonds or by reason thereof, and shall have no further need for said bonds, for the prosecution of said actions, that then, and not until then, shall said bonds be delivered to the Mid-Crosstown Railway Company.

1043 THIRD: The Committee shall have full power and authority in its uncontrolled discretion to carry out the foregoing plan; and also to prosecute, liquidate, compromise, adjust or settle any and all of the said claims against the New York Railways Company and Metropolitan Traction Company and the persons who were at one time directors of the Metropolitan Traction Company and the personal representatives of any of such persons. If any moneys shall be realized upon said claims, the Committee shall pay thereout the reasonable costs and expenses incurred by them in respect thereof, including reasonable compensation for their services, and shall satisfy all lawful
1044 claims of bondholders, creditors and stockholders of the Crosstown Company, in accordance with their respective rights and interests, if any; but in no event shall any bondholder be entitled to receive more than the par value of his bonds and the assessments paid by him thereon, with interest, after giving credit for all sums received on account of such bonds, assessments and interest under this agreement and from all other sources; and any and all moneys remaining in the hands

of the Committee after making the payments aforesaid, shall be paid to the Mid-Crosstown Company.

FOURTH: All acts and things done by the Committee and of the Purchasing Committee prior to the date hereof are hereby ratified, confirmed and approved.

FIFTH: Except as modified and amended by this agreement the said Plan and Agreement of Reorganization dated December 11, 1911, shall 1046
be and remain in full force and effect; and in addition to all the rights, powers and discretion granted to the Committee by this agreement, the Committee shall have and may exercise all the rights, powers and discretion by said Plan and Agreement of Reorganization vested in or conferred upon them, except and to the extent that the same are modified, or limited by this agreement; and the Committee shall be entitled to the immunities set forth in said Plan and Agreement of Reorganization as if the same were herein set forth at large.

The Committee may construe the Plan and 1047
Agreement of Reorganization and this Agreement and its construction thereof or action thereunder in good faith, shall be final and conclusive. It may supply any defect or omission, or reconcile any inconsistency in such manner and to such extent as shall be necessary to carry out the same properly and effectively.

SIXTH: A printed copy of this agreement has been deposited with the Central Trust Company of New York, which is hereby constituted the De-

positary, and such printed copy shall be held and taken as the original agreement.

A brief notice of the fact of the preparation, adoption and approval of the said amendment of the Plan and Agreement of Reorganization and of this agreement shall be published at such time as the Committee may determine, at least once in the Philadelphia Public Ledger, a newspaper published in Philadelphia, Pa., and at least once in the New York Times, a newspaper published in the City of New York, Borough of Manhattan,
1049 and such notice shall state that this amended agreement of reorganization shall become effective and binding upon all certificate holders and shall be finally and conclusively deemed to have been assented to by all certificate holders unless within twenty days after the deposit of this agreement, the date of which shall be specified in the notice, more than one-third in amount of the certificate holders shall file, or have filed with the Depositary, written notice of their dissent therefrom. The notice of dissent filed by each certificate holder shall specify the date and the number of certificate held by him. The first publication of
1050 the notices above provided for shall be not more than seven days after the date of the filing of this agreement. If more than one-third in amount of the certificate holders shall so file within the time aforesaid notice of dissent from this agreement, then this agreement shall not be effective; but notwithstanding any such dissent the Bondholders' Committee may hereafter prepare, adopt or approve any other amendment of said plan and agreement of December 11, 1911, or any new plan and agreement of reorganization, and give notice thereof in the manner in that behalf provided in

the Bondholders' Agreement, of July 22, 1908, and upon the requisite assent of two-thirds in amount of certificate holders to such other amendment or plan of reorganization, the said other amendment or plan of reorganization shall become effective and binding on all certificate holders.

A failure to effectuate the Plan of Reorganization, as amended by this Agreement, or failure to carry out the same shall not terminate said Plan of Reorganization or this agreement or the powers of the Committee, but if at any time hereafter it 1052
appears in the honest judgment of the Committee that it will be impossible or impracticable to carry out or effectuate the same, then the Committee shall give notice of the abandonment of the said Plan of Reorganization as amended by this Agreement in the manner provided for in the Bondholders' Agreement, and thereupon the mortgaged premises and property purchased at the foreclosure sale shall be deemed to be acquired and held by the Bondholders' Committee in trust for the Certificate Holders, subject exclusively to the provisions of the Bondholders' Agreement, and free from the provisions and obligations of the 1053
Plan of Reorganization and of this agreement.

JOHN W. HAMER,
HORACE A. DOAN,
A. MERRITT TAYLOR,
W. C. HEPPENHEIMER,
CHARLES E. LOXLEY,
Certificate Holders.

1054 JOHN W. HAMER, et al. *vs.*

Stipulation.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

JOHN W. HAMER et al.,
Plaintiffs,

against

1055 NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY and CENTRAL TRUST COMPANY OF NEW YORK,
Defendants.

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties to the above entitled suit that for the purposes of this suit they admit as facts the statements contained in the following two articles, subject, however, to any objections by any party to materiality and relevency as evidence of any or either of the facts
1056 so admitted. Subject to such objections, the said statements shall upon any trial or hearing of this suit, and upon any motion, appeal or other proceeding therein, or arising therefrom, be used as complete, competent proof of the facts stated, and with the same force and effect as if all the facts therein stated had been duly proved by competent evidence before the Standing Examiner of the Court upon the hearing for the taking of proofs

under equity rules, and in accordance with the statutes in such case made and provided, and with the rules and practice of the United States Courts, or as though the facts had been proven in open court by competent proof.

FIRST: The persons whose names appear herein and each of them enumerated on plaintiffs' Exhibit 14 were holders of bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, in the amounts put after their respective names, and that they deposited said bonds 1058
with the Central Trust Company of New York, one of the defendants in this action, under the agreement designated "Plaintiffs' Exhibit 13," and that they, and each of them, shall be deemed to be a citizen of the State of New York for all purposes of this suit, or any motion therein, or any appeal thereof; and as to all corporations appearing in said list, that they are organized under the laws of the State of New York, and that their principal place of business within the State of New York, or are organized as national banks and have their principal place of business within the State of New York. 1059

Charles F. McKenna, 50 Church St., N. Y.	$10,000
Port Richmond Natl. Bank, Port Richmond, S. I., N. Y.	5,000
Charles F. McKenna, 50 Church St., N. Y.	10,000
Charles B. Alexander, 165 Broadway, N. Y.	6,000
Clifford Seasongood, 32 Nassau St., N. Y.	5,000

	Farmers' Loan & Trust Co., 22 William St., N. Y.	40,000
	M. & H. Clarkson, 44 Wall St., N. Y.	2,000
	Dominick & Dominick, 115 Broadway, N. Y.	10,000
	August B. Field, c/o Cravath, Henderson & DeGersdorf, 52 William St., N. Y.	2,000
	J. S. Bache & Co., 42 Broadway, N. Y.	10,000
	Edwin K. Scheftel, 42 Broadway, N. Y.	5,000
	Corn Exchange Bank, c/o E. G. Kremer,	
1061	15 William St., N. Y.	24,000
	Moses Michaelis, 81 Murray St., N. Y.	5,000
	Emily T. Falkenau, 30 East 42d St., N. Y.	1,000
	Otto M. Eidlitz, 30 East 42nd St., N. Y.	1,000
	Robert J. Eidlitz, 30 East 42nd St., N. Y.	1,000
	Ernest F. Eidlitz, 30 East 42nd St., N. Y.	1,000
	Charles L. Eidlitz, 30 East 42nd St., N. Y.	1,000
	Leslie M. McCrum, 22 William St., N. Y.	5,000
	Ella J. Gilbert, 317 W. 89th St., N. Y.	4,000
	George E. Weed, 32 W. 40th St., N. Y.	10,000
	Thomas S. Blankley, 113 Lefferts Place, Brooklyn,	2,000
1062	W. A. Robinson, 11 Broadway, N. Y.	5,000
	Clara L. Drake Smith, 17 E. 53rd St., N. Y.	1,000
	Speyer & Company, 24 Pine St., N. Y.	5,000
	George F. Secor & Co., 61 Broadway, N. Y.	1,000
	Charles A. Frank & Co., 45 Broadway, N. Y.	5,000

J. Henry Dick and Adolph Mollenhauser, Executors of William Dick, 84 Broadway, Brooklyn,	4,000
Kraus Bros. & Co., 24 Broad St., N. Y.	1,000
E. R. Chapman & Co., 80 Broadway, N. Y.	5,000
Fleitman & Co., 484 Broome St., N. Y.	7,000
James Barclay, 2 Rector St., N. Y.	1,000
Adele E. Flint, 164 Madison Avenue, N. Y.	3,000
Charles A. Schiernen, 30 Ferry St., Brooklyn,	5,000

1064

SECOND: The complainants are, and at the commencement of this action were, residents and citizens of the states other than the State of New York; and all the persons and corporations set forth in complainants' Exhibit 14 wherever the addresses given in said Exhibit No. 14 are in states other than the State of New York, for the purposes of this suit, or any motion therein, or any appeal thereof, are and shall be deemed to be citizens and residents of states other than the State of New York; and corporations organized under the laws of states other than the State of New York, that such corporations have their 1065
principal place of business outside of the State of New York, or are national banks having their principal place of business outside of the State of New York; and that no person or corporation depositing bonds under said agreement, wherever the addresses given in said Exhibit No. 14, designated as "List of depositing bondholders of the Twenty-eighth and Twenty-ninth Streets Cross-

town Railroad Company" are outside of the State of New York, they shall be deemed to be residents and citizens of states other than the State of New York.

(Signed) A. S. GILBERT,
Solicitor for Complainants.

(Signed) JAMES L. QUACKENBUSH,
Solicitor for defendants New York Railways Company and Metro-
1067 politan Street Railway Company.

(Signed) JOLINE, LARKIN & RATHBONE,
Solicitors for defendant Central Trust Company of New York.

1068

Statement Agreed on by Counsel for the Respective Parties as to Various Exhibits.

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN, and CHARLES E. LOXLEY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York as Trustee, Plaintiffs. 1070

against

NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY and CENTRAL TRUST COMPANY OF NEW YORK, Defendants.

1071

The defendant, the Metropolitan Street Railway Company had outstanding two mortgages covering its property and franchises; the first mortgage dated the first day of February, 1897, to the Guaranty Trust Company of New York, and the second mortgage, termed its refunding mortgage, to the Farmers' Loan & Trust Company, dated the 21st day of March, 1902. There were issued and outstanding under the first mortgage

bonds of the par value of $12,500,000 and under the second mortgage bonds of the par value of $16,604,000. The Metropolitan Street Railway Company became insolvent and a receiver was appointed of its property in a creditors' bill in September, 1907. Subsequently, foreclosures of these mortgages were commenced in the District Court of the United States for the Southern District of New York and receivers were appointed of the property under these foreclosure actions and on May 31st, 1910, a decree of foreclosure
1071 was entered in the suit commenced by the Farmers' Loan & Trust Company, and the decree of foreclosure is in evidence in this case and is designated "Defendants' Exhibit 39" and on November 2, 1910, in the same action a supplemental decree of foreclosure was entered in the District Court of the United States. On December 29, 1911, a decree of foreclosure was entered on mandate of the United States Circuit Court of Appeals for the Second Circuit, modifying the decree of foreclosure heretofore entered in the action commenced by the Farmers' Loan & Trust Company against the Metropolitan Street Railway
1072 Company. The decree of foreclosure in the action commenced by the Guaranty Trust Company was entered April 6, 1910, and is Defendants' Exhibit 38. Thereafter, the committees for the bondholders secured by said two mortgages of the Metropolitan Street Railway Company made and executed a plan of reorganization of the Metropolitan Street Railway Company's properties which plan of reorganization is known as "Complainant's Exhibit 3,, and is contained in this record. On December 29, 1911, the Special Master

filed the terms of sale under this foreclosure decree of the Farmers' Loan & Trust Company action and also the terms of sale under the foreclosure decree of the Guaranty Trust Company action. These terms of sale are known as Defendants' Exhibits 42 and 43. Thereafter and on December 29, 1911, the Special Master sold all and singular the property of the Metropolitan Street Railway Company covered by the two mortgages of the Metropolitan Street Railway Company hereinbefore referred to, to a Committee of the Bondholders designated as the Purchasing 1076
Committee. The Special Master's report of sale was duly filed and on December 29, 1911, a decree confirming the sale was entered in the office of the District Court of the United States for the Southern District of New York. These reports of sale and decree confirming the same are respectively known as Defendants' Exhibits 44, 45, 48 and 49.

That the bondholders' purchasing committee organized the defendant, New York Railways Company, under and pursuant to the provisions of Section 9 of the Stock Corporation Law of the State of New York, which certificate of incorpora- 1077
tion is Complainant's Exhibit 1, and is contained in this record. That the foreclosure of the mortgages against the contestants was carried through by said bondholders, and that said bondholders through their committees purchased the property at foreclosure sale and organized the New York Railways Company and retained exclusive control over such organization until the making and execution of the mortgages hereinafter referred to and the issue of the bonds thereunder and the issue of the stock pursuant to the plan of re-

organization. And thereafter the Special Master conveyed all and singular the property sold under foreclosure to the Purchasing Committee, which deeds of sale are Defendants' Exhibits 50 and 51 in this action, and that thereafter and on December 31, 1911, the Purchasing Committee conveyed all and singular the property so purchased to defendant, New York Railways Company, which deed is known as Defendants' Exhibit 52. That the sales were thereafter confirmed by decrees of the Circuit Court of the United States for the
1079 Southern District of New York which decrees are Defendants' Exhibits 48, 49 and 55. And it is stipulated for the purposes of this appeal only that said proceedings were in all respects regular and conformed to law and to the statute of the State of New York in such cases made and provided, and conveyed good title to all of the property so sold, as aforesaid to defendant, New York Railways Company, except that it is claimed by the plaintiff and denied by the defendants that the foreclosure proceedings, the decrees and sales thereunder, were affected by the claims made by the plaintiff in this action and were void as to
1080 creditors of the Metropolitan Street Railway Company within the doctrine of Northern Pacific Railway Company v. Boyd, 228 U. S., 482 and Kansas City Southern Railway Company vs. Guardian Trust Company, 240 U. S., 166.

That thereafter the bondholders' committee and New York Railways Company, pursuant to the Public Service Commissions Law of the State of New York, duly filed their petitions for the approval and authorization of the making of said mortgages and the issue of the securities there-

under, including the bonds issued and secured by said mortgage and the issue of the capital stock of the New York Railways Company and its distribution pursuant to said plan of reorganization. Said petitions are in evidence in this proceeding, known as Defendants' Exhibits 74 and 75. That thereafter, the Public Service Commission for the Second District, duly made its order permitting the making of the mortgages herein referred to and permitting the issue of the securities thereunder and the capital stock of the New York Railways Company and the distribution of the 1082
securities pursuant to the plan of reorganization, being Defendants' Exhibit 76, and is contained in this record.

That thereafter, pursuant to the provisions of the plan of reorganization herein referred to, defendant, New York Railways Company made and executed two mortgages known respectively as its first real estate and refunding mortgage, to the Guaranty Trust Company of New York, securing its thirty year 4% gold bonds, dated January 1, 1912, under and pursuant to which, and secured thereby, there have been issued bonds of the par value of $16,295,947.66 under the terms of the 1083
plan of reorganization, and in addition thereto bonds of the par value of $1,774,000 have been issued under and pursuant to the terms of said mortgage. And another mortgage to the Farmers' Loan & Trust Company as trustee, known as its adjustment mortgage, securing thirty year 5% income gold bonds. That there have been issued pursuant to the terms of this mortgage, and the plan of reorganization and secured thereby, bonds of the par value of $30,626,977.31, and

the mortgages so made and executed are in evidence and known as Defendant's Exhibits 79, 80 and 81. That in accordance with said plan of reorganization there was issued by the New York Railways Company to the stockholders of the Metropolitan Street Railway Company the capital stock of the New York Railways Company aggregating $17,500,000.

For the purposes of this appeal the proceedings had on the making and executing of these mortgages, the approval thereof by the Public Service
1085 Commission were in all respects regular, conformed to all the requirements of the law of the State of New York, and the securities issued thereunder constitute the valid obligations of defendant, New York Railways Company, except that it is claimed by the plaintiff and denied by the defendants that the foreclosure proceedings, the decrease and sales thereunder were void as to creditors of the Metropolitan Street Railway Company within the doctrine of Northern Pacific Railway Company v. Boyd, 228 U. S., 482, and Kansas City Southern Railway Company v. Guardian Trust Company, 240 U. S., 166, and neither Guaranty
1086 Trust Company nor the Farmers' Loan & Trust Company are parties to this action or have been served with any process therein.

On October 11, 1911, the defendant, Central Trust Company, in a motion entitled in and supplemental to the insolvency proceedings of the Metropolitan Street Railway Company asked leave for an extension of time to file its claim against the Metropolitan Street Railway Company, which claim was a claim on the deficiency judgment obtained by it against the Metropolitan

Street Railway Company and is the same judgment referred to in the bill of complaint of this action. Said petition and affidavits are in evidence and are known as Defendants' Exhibit 86. On October 23, 1911, an order was duly made by a judge of the district court of the United States for the Southern District of New York, extending said time on the petition above referred to. And on January 12, 1912, on the petition of the Central Trust Company in the same action, time was again extended in which to file said claim. Said petitions and orders are respectively known as Defendant's Exhibits 87, 88 and 89. On May 31, 1912, the Special Master reported on said claim of the Central Trust Company, and on November 15, 1912, the report was referred back to the Special Master for further hearings, pursuant to an order of the District Court, filed on said day. And on July 10, 1913, the Special Master again made his report being Defendant's Exhibit 92, which is part of this record.

Exceptions to said report were filed by the Central Trust Company as Trustee on July 7th, 1913; and on October 6th, 1913 the Court entered a decree confirming the report of the Special Master disallowing said claim upon the ground assigned by said Master. The claim so disallowed was based upon the same judgment as is referred to in the bill of complaint in this action. Said orders, report and decrees are in evidence and known as Defendant's Exhibits 91, 92, 93 and 94.

Defendants introduced in evidence in support of allegations of its answer, a list of the stockholders of the defendant, New York Railways Company as of the date of the commencement of

this action, which list of stockholders was marked in evidence as Defendants' Exhibit 109 and is printed in this record.

The stockholders appearing on Defendants' Exhibit 109 were the stockholders of record of the defendant New York Railways Company at and prior to the commencement of this action. Some of these stockholders were stockholders of the Metropolitan Street Railway Company and acquired their stock as such stockholders of the Metropolitan Street Railway Company pursuant
1091 to the plan of reorganization and others by purchase in the open market from persons originally receiving the same pursuant to the plan of reorganization. Some of said stockholders appearing on said list, Defendants' Exhibit 109, are residents of the State of New York and others of them are residents and citizens of States other than the State of New York. None of them have been made parties to, or have been served with any process in this action.

The defendant, Central Trust Company of New York, is a corporation organized and existing under Chapter 832 of the Laws of 1873 of the
1092 State of New York, which became a law on June 25th, 1873, and said Central Trust Company is a citizen of the State of New York.

Subject to the right of either party to produce either the original Exhibits or a copy thereof on this appeal, or to refer to the whole or any portion of any such Exhibits, they and the substance and effect thereof shall be deemed for the purposes of this appeal to be sufficiently described in this stipulation.

1093

This stipulation is made between the parties to set forth facts and inferences that may be drawn from these facts for the purpose of shortening this record and for the determination of the question of jurisdiction and upon the distinct understanding and stipulation that this stipulation is not to be used in any other hearing, trial or proceeding in this or any other action between the parties hereto or to be referred to in any other hearing, trial or proceeding in this or any other action between the parties hereto, or any of them.

1094

Dated, New York, February 28, 1917.

A. S. GILBERT,
Attorney for Plaintiffs.

JAMES L. QUACKENBUSH,
Attorney for Defendants New York Railways Company and Metropolitan Street Railway Company.

JOLINE, LARKIN & RATHBONE,
Attorneys for Defendant Central Trust Company of New York.

1095

1096 JOHN W. HAMER, et al. *vs.*

Opinion of Hough, J.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

JOHN W. HAMER et al.,

vs.

1097 NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY and CENTRAL TRUST COMPANY OF NEW YORK.

Final hearing in equity; action to recover against the New York Railways Company as successor to Metropolitan Street Railway Company the face value and interest of certain bonds said to be owned by plaintiffs, and part of an issue made by the 28th and 29th Streets Crosstown Railroad Company and guaranteed as to the principal and interest of each bond by the Metropolitan Street Railway Company.

1098 All the plaintiffs are citizens of States other than New York, and all the defendants are corporations of the State of New York. The ultimate basis of recovery is the doctrine of Northern Pacific Railroad Company vs. Boyd, 228 U. S., 482, and Kansas City Southern Railway Co. vs. Guardian Trust Co., 240 U. S., 166.

NEW YORK RAILWAYS COMPANY, et al. 1099

Abraham S. Gilbert, Esq., for plaintiffs.
Robert Reid Rogers and Albert J. Kenyon, Esqrs., for New York City Railways Co.

James L. Quackenbush, Esq., for Metropolitan Street Railway Co.

Arthur H. Van Brunt, Esq., for Central Trust Co. of N. Y.

HOUGH, D. J.

At the outset the jurisdiction of this Court is challenged, and it is obviously advisable not to 1100
entertain jurisdiction (until the Appellate tribunal has spoken) unless the right of this Court to adjudicate upon the merits is clear.

The substantial defendant is New York Railways Company, and it has specifically pleaded "that the parties to this action should be realigned by the Court and placed according to their interests in the subject matter of this suit." The propriety of this demand is not questioned, and neither is it doubted that the interest in the sense of desiring the plaintiffs to recover) of the Central Trust Company is not on the side of the defendants but of the plaintiffs. 1101

It is admitted also that if the parties are realigned, and the Central Trust Company becomes a substantial plaintiff, this Court is without jurisdiction because the requisite diversity of citizenship does not exist.

Therefore the plaintiffs' contention as put by counsel, is that the Central Trust Company is neither a necessary nor proper but merely a formal party and should on that account be disregarded.

The facts necessary for consideration of the jurisdictional question are simple and few. The 28th Street Company made a mortgage to the Central Trust Company; at substantially the same time its road being under lease to the Metropolitan Company, the latter Company executed a written guarantee (in consideration of the lease) to the Central Trust Company as trustee of said mortgage, and "for the benefit of the holders thereof," promising punctual payment of the interest and princi-
1103 pal of the bonds. This guarantee was endorsed upon each bond.

Subsequently the Metropolitan Company passed into the hands of Receivers, the Receivers under instruction of this Court dropped the lease of the 28th Street Company, the Central Trust Company began an action to foreclose its mortgage and made the Metropolitan Company a defendant by reason of the guarantee aforesaid. This Court entered an order permitting the demand of the Central Trust Company as against the Metropolitan Company to be liquidated in the foreclosure suit. The amount of the judgment against the
1104 guarantor was the deficiency on the foreclosure, and it was entered in the Supreme Court of the State of New York on February 20, 1912, for the sum of $1,745,344.21.

The plaintiffs constitute a Bondholders' Committee, and are assumed (for purposes of discussion) to be the holders of legal title to 1,373 out of an issue of 1,500 bonds of the 28th Street Company of the par value of $1,000 each. It is alleged that the plaintiffs have requested the Cen-

tral Trust Company to bring this suit, and such request has been refused. The prayer of the bill is that the property of the Metropolitan Company, now of the New York Railways Company, shall be declared subject to the lien of the Central Trust Company judgment against the Metropolitan Company in the sum above stated, together with interest. In argument this demand is somewhat modified so as to ask recovery only for that proportion of the judgment which plaintiffs' 1,373 bonds bear to the whole issue of bonds.

The answer of the Central Trust Company admits the plaintiffs' demand and joins in the prayer of the bill. This is enough, I think, to show the interest of the Trust Company and to require the Court to disregard the admitted allegation of the bill that a request has been made that the Trust Company sue and such request been refused. Obviously, therefore, the plaintiffs' sole contention must be that above stated, viz: that the Central Trust Company is to be disregarded and the suit heard as though it had not been made a party at all. 1106

The basis of this argument is as put by counsel that "plaintiffs as bondholders have not sued in the right of the Central Trust Company, but in their own right upon their own cause of action. The judgment is merely cumulative evidence of the liquidation of the bondholders' claim." 1107

This argument does not go far enough back. Plaintiffs' rights ultimately depend upon the guarantee; whether by that word is meant the guarantee on the bonds or the guarantee affixed to or delivered with the mortgage, it is the same guarantee.

On that guarantee and on that alone the Central Trust Company recovered a judgment, and the judgment merged the guarantee. Gutta Percha, etc. Co. vs. Mayor, 108 New York, 276.

After the Trust Company as trustee for the holders of all bonds, including plaintiffs' obtained this judgment, no bondholder was or could ever be entitled to another judgment on the same guarantee. Watson vs. Chicago, Rock Island, etc. Co., 169 App. Div., 663.

It follows, in my opinion, from this doctrine,
1109 that since plaintiffs began their action after the trustee got its judgment, their cause of action (in the sense of power and right to bring suit) must be the judgment and nothing else.

To avoid this result, plaintiffs further urge that they are the absolute owners of 1373/1500 of that judgment; so much of the judgment is theirs by legal title. And for this proposition they rely upon the real party in the interest rule of the Code, and Greene vs. Republic Fire Ins. Co., 84 N. Y., at 575. But the holding in that case was no more than that a "use plaintiff" under the practice at common law was but the *alter ego* of
1110 of the party on whose behalf he sued, and not a trustee at all.

In this case there are admittedly bonds not belonging to these plaintiffs for which the Central Trust Company is just as much a trustee(active or passive) as it is for the plaintiffs, and no way has been pointed out by which the Central Trust Company is now or ever has been divested of its trusteeship *in toto,* and it is not understood how

it can be partially divested of its trusteeship without being wholly stripped thereof.

Nor would it better the matter jurisdictionally to have the Central Trust Company execute an assignment of the necessary fraction of this judgment, or of all of it; for if the trustee could not sue in this Court in an action against these defendants, its assignee could not do that thing.

To follow this doctrine of plaintiffs' to its ultimate, every bondholder is at this moment the absolute owner (in fee so to speak) of an aliquot part of this judgment and entitled to all the remedies 1112
of a judgment creditor (except perhaps the issuance of execution) wherever he may happen to wish to institute suit.

It seems to me that this is carrying the matter of passive trusts too far, and is opposed to the case of Blacklock vs. Small, 127 U. S., 96.

Indeed in my opinion the Central Trust Company is a most active trustee in respect of this judgment. It assumed new duties by entering the judgment, viz: to ascertain who owned the bonds on behalf of which judgment was entered. If it had the money offered today wherewith to pay the judgment it certainly would have the 1113
right to receive it and it would certainly be responsible for the proper distribution of the same—that is to say, it must administer the estate.

This leads to another consideration, viz: the rule as to when a trustee is a necessary party. In Carey vs. Brown, 92 U. S., 171, it was pointed out that where a trustee merely seeks to recover the trust property the *cestuis que* trustent are not properly parties; but if he seeks to administer, i. e., to fulfil the trust by distribution, the *cestuis*

are necessary parties. In this case the *cestuis* themselves seem to be suing for a decree which will administer 1373/1500 of the trust. How the trustee can be averred not to be a necessary party is quite beyond my comprehension.

If the trustee were left out of the suit how could the defendants safely make payment if they wished to? Plainly they could not, and they are therefore entitled to have the trustee in the action; but being in, the trustee is plainly hostile to the other defendants, and must therefore be
1115 aligned with the plaintiffs for purposes of jurisdiction.

On the ground, therefore, that the guarantee was merged in the judgment, and this action is on the judgment, and upon the further ground that the Trust Company is an active trustee and the legal owner of the judgment in question, jurisdiction cannot be sustained.

May 15, 1916.

1116

Final Decree.

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN, and CHARLES E. LOXLEY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York as Trustee,

Plaintiffs,

against

NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY and CENTRAL TRUST COMPANY OF NEW YORK,

Defendants.

1118

In Equity
No. E-10-341

1119

This cause came on to be heard before me at the May Term of this Court and was argued by Abraham S. Gilbert, Esq., solicitor for the plaintiffs; Richard Reid Rogers of counsel for defendants, New York Railways Company, and Metropolitan Street Railway Company; and by Arthur H. Van Brunt, solicitor for defendant Central Trust Company of New York; and it appearing

1120 JOHN W. HAMER, et al. *vs.*

to me from the pleadings and proofs that the defendant Central Trust Company is a necessary party to this action and that its interests in the action are identical with those of the plaintiffs, and that defendant Central Trust Company of New York is a corporation, organized and existing under the laws of the State of New York, and is a citizen of that State, and the jurisdiction of this Court to hear and determine this action was raised by the defendant New York Railways Company upon a motion to realign the parties
1121 and to dismiss for want of jurisdiction, and thereupon, upon consideration of the pleadings and proofs, it is

ORDERED, ADJUDGED and DECREED, that the defendant Central Trust Company be, and it hereby is realigned as a party complainant in this action, and that this bill be dismissed for want of jurisdiction in this Court to hear and determine the issues upon its merits, without costs.

Dated, New York, May 29, 1916.

C. M. HOUGH,
1122 . District Judge.

Certificate.

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN, and CHARLES E. LOXLEY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York as Trustee,

Plaintiffs,

against

NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY and CENTRAL TRUST COMPANY OF NEW YORK,

Defendants.

1124

In Equity
No. 2–10–341
Certificate.

1125

In this cause I hereby certify that the jurisdiction of this Court is in issue and that the judgment of the dismissal herein made is based solely upon the ground that the record does not show that the controversy involved is one between citizens of different States, but that it appears from the record that one of the defendants, to wit, Central Trust Company of New York, is a neces-

1126 JOHN W. HAMER, et al. *vs.*

sary and indispensible party and is not antagonistic to the complainants and that therefore it must be aligned upon the same side of the controversy with the complainants; and therefore some of the defendants and some of the complainants are, in fact, citizens of the same State and no other ground of jurisdiction apears from the record. The bill herein was dismissed only for the reason above stated; that is, that the District Court of the United States has no jurisdiction.

This certificate is made in conformity to the
1127 Act of Congress of March 3, 1891, Chapter 517, and the opinion filed herein is made part of the record, and will be certified to and sent up as a part of the proceedings, together with this certificate.

Dated, New York, June 29, 1916.

C. M. HOUGH,
District Judge.

1128

NEW YORK RAILWAYS COMPANY, et al. 1129

Notice of Appeal from Judgment.

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN, and CHARLES E. LOXLEY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York as Trustee,

Plaintiffs,

against

NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY and CENTRAL TRUST COMPANY OF NEW YORK,

Defendants.

1130

In Equity
No. E-10-341

1131

The above named plaintiffs, conceiving themselves aggrieved by the judgment of dismissal entered on May 29th, 1916, in the above entitled proceding, do hereby appeal from said judgment to the Supreme Court of the United States, and they pray that this, their appeal, may be al-

377

1132 JOHN W. HAMER, et al. *vs.*

lowed; and that a transcript of the record and proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, New York, June 27, 1916.

A. S. GILBERT,
Attorney for Plaintiffs and Appellants John W. Hamer et al.,
43 Exchange Place,
New York City.

1133

And now, to wit, on June 27, 1916, it is ordered that the appeal be allowed as prayed for.

C. M. HOUGH,
District Judge.

1134

Order Allowing Appeal.

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN, and CHARLES E. LOXLEY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York as Trustee,

Plaintiffs-Appellant,

against

NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY and CENTRAL TRUST COMPANY OF NEW YORK,

Defendants-Appellee.

1136

In Equity
No. E–10–341
Order
Allowing
Appeal.

1137

This day came John W. Hamer, W. C. Heppenheimer, A. Merritt Taylor, Horace A. Doan, and Charles E. Loxley, being all of the complainants in the above entitled cause, and presented their

petition for an appeal and an assignment of errors accompanying the same, which petition upon consideration of the Court is hereby allowed and the Court allows an appeal to the Supreme Court of the United States upon filing of a bond in the sum of $250, with good and sufficient security, to be approved by the Clerk of this Court.

Dated, New York, June 27, 1916.

C. M. HOUGH,
District Judge.

1139

1140

NEW YORK RAILWAYS COMPANY, et al. 1141

Assignment of Errors.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN, and CHARLES E. LOXLEY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York as Trustee,

Plaintiffs,

against

NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY and CENTRAL TRUST COMPANY OF NEW YORK,

Defendants.

1142

In Equity
No. E-10-341
Assignment
of Errors.

1143

The complainants pray an appeal from the final decree of this Court to the Supreme Court of the United States and assign for error:

FIRST: That the Court erred in holding that the defendant, Central Trust Company of New York is a necessary and indispensable party to this cause; and that it has any interest in the sub-

ject matter herein involved which must be considered by the Court.

SECOND: That the Court erred in holding that in the absence of any showing of an antagonism between the defendant, the Central Trust Company of New York and the complainants, said defendant is to be aligned for purposes of jurisdiction upon the same side of the controversy with the complainants in this suit.

1145 THIRD: That the Court erred in holding that the rights of the complainants and other bondholders under the guaranty endorsed on the bonds described in the bill of complaint, merged in the deficiency judgment entered by said Central Trust Company of New York.

FOURTH: That the Court erred in not holding that the complainants and other bondholders were vested with separate causes of action upon the said guaranty additional to the trustee's rights under the mortgage.

1146 FIFTH: That the Court erred in not holding that the judgment obtained by the Central Trust Company of New York against the Metropolitan Street Railway Company is in equity the property of the bondholders and that the lien and rights thereunder are enforcible in equity by the bondholders.

SIXTH: That the Court erred in holding that this case was not a controversy between citizens

of different states and that the court did not have jurisdiction thereof.

SEVENTH: That the Court erred in dismissing complainants' bill.

WHEREFORE plaintiffs pray that the decree of the said District Court be reversed.

Dated, New York, June 27th, 1916.

A. S. GILBERT,
Solicitor for Plaintiffs. 1148

Citation.

UNITED STATES OF AMERICA,

SOUTHERN DISTRICT OF NEW YORK.

United States Supreme Court:

To New York Railways Company, Metropolitan Street Railway Company and Central Trust Company of New York, defendants and appellees in Case No. E-10-341 of John W. Hamer et al. v. New York Railways Company et al., GREETING: 1149

YOU ARE HEREBY CITED and admonished to be and appear at a session of the United States Supreme Court to be holden at the City of Washington on the 27th day of July, 1916, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Southern Dis-

1150 JOHN W. HAMER, et al. *vs.*

trict of New York, wherein John W. Hamer et al. are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this the 27th day of June, 1916, and of independence
1151 the 140th year.

C. M. HOUGH,
Judge.

1152

Stipulation as to Record.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN, and CHARLES E. LOXLEY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York as Trustee, 1154

Plaintiffs,

against

NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY and CENTRAL TRUST COMPANY OF NEW YORK, 1155

Defendants.

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that the transcript on appeal to the United States Supreme Court from the decree in the above entitled action dated May 29, 1916, shall consist of the following:

1156 JOHN W. HAMER, et al. *vs.*

1. Subpoena,

1-A. Bill of complaint,

2. Answer of New York Railways Company,

3. Answer of the Central Trust Company of New York,

4. Plaintiffs' Exhibit 1, Copy of Certificate of Incorporation of New York Railways Company,

5. Plaintiffs' Exhibit 2, Agreement between Joint Committee and New York Railways Com-
1157 pany, dated December 30th, 1911.

6. Plaintiffs' Exhibit 3, Plan and agreement for reorganization of Metropolitan Street Railway Company dated November 29th, 1911.

7. Plaintiffs' Exhibit 13, Bondholders' agreement of Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company dated July 22nd, 1908,

8. Plaintiffs' Exhibit 14, list of names and addresses of bondholders of Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company depositing bonds under agreement.
1158

9. Plaintiffs' Exhibit 15, First mortgage of Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company to Central Trust Company.

10. Plaintiffs' Exhibit 16, Traffic agreement between Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Co. and Metropolitan Street Railway Company dated September 29th, 1896.

1159

11. Plaintiffs' Exhibit 22 (portion thereof), amended complaint in Supreme Court, New York County, action by Central Trust Company against Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company; answer of Metropolitan Street Railway Company and judgment of foreclosure.

12. Plaintiffs' Exhibit 24, Direction to docket judgment in action of Central Trust Company against Metropolitan Street Railway Company dated February 20th, 1912.

1160

13. Plaintiffs' Exhibit 28, Referee's final report of sale in foreclosure action by Central Trust Company against Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company filed January 22nd, 1912.

14. Plaintiffs' Exhibit 29, Certificate of Clerk of New York County dated October 21st, 1914, judgment against Metropolitan Street Railway Company.

15. Plaintiffs' Exhibit 30, Certificate of Clerk of New York County, dated October 21st, 1914, judgment against Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company.

1161

16. Plaintiff's Exhibit 40, Declaration of principal by Central Trust Company in default of interest payment on Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company mortgage.

17.. Defendants' Exhibit 4, Order filed October 1st, 1907, in Pennsylvania Steel action making Metropolitan Street Railway Company a party defendant and extending receivership to the properties of Metropolitan Street Railway Company.

18. Defendants' Exhibit 5, Order filed October 9th, 1907, in Pennsylvania Steel action making the receivership permanent.

19. Defendants' Exhibit 6, Order filed November 7th, 1907, in Pennsylvania Steel action appointing Special Master to hear and determine claims and finding the Metropolitan Street Railway Company insolvent.

20. Defendants' Exhibit 76, Order of the Pub-
1163 lic Service Commission dated January 24th, 1912, case number 1305.

21. Defendants' Exhibit 92, Report of Special Master in claim of Central Trust Company filed July 10th, 1913.

22. Defendants' Exhibit 109, List of stockholders of New York Railways Company dated March 15th, 1915.

23. Defendants' Exhibit 112, Document entitled amended plan and agreement for reorganization and readjustment of Twenty-eighth and
1164 Twenty-ninth Street Crosstown Railroad Company.

24. Stipulation by counsel taken from record as to residence of parties and depositing bondholders.

25. Statement agreed upon by counsel for the respective parties as to various exhibits and all exhibits therein referred to.

26. Opinion of Hough, J.

NEW YORK RAILWAYS COMPANY, et al. 1165

27. Decree.

28. Certificate as to question of jurisdiction.

29. Petition for appeal.

30. Allowance of appeal.

31. Assignment of errors.

32. Citation.

33. This stipulation. 1166

34. Clerk's certificate.

IT IS FURTHER STIPULATED that the printing of the bond and all other papers and exhibits on said appeal be waived except the papers above named.

Dated, February 28, 1917.

A. S. GILBERT,
Attorney for Plaintiffs.

1167

JAMES L. QUACKENBUSH,
Attorney for New York Railways Company and Metropolitan Street Railway Company.

JOLINE, LARKIN & RATHBONE,
Attorneys for Central Trust Company of New York.

1168 JOHN W. HAMER, *et al. vs.*

Stipulation of Record.

IN THE

UNITED STATES SUPREME COURT.

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN, and CHARLES E. LOXLEY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York as Trustee,

Plaintiffs,

1169 against

NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY and CENTRAL TRUST COMPANY OF NEW YORK.

Defendants.

It is hereby stipulated and agreed that the foregoing record is a true and correct transcript of the record and proceedings had herein and may be certified by the Clerk of the Court and filed in the office of the Clerk of the Supreme Court of the United States.

Dated, New York, February 28, 1917.

1170 A. S. GILBERT,
Solicitor for Plaintiff-Appellants.

JAMES L. QUACKENBUSH,
Solicitor for Defendants New York Railways Company and Metropolitan Street Railway Company.

JOLINE, LARKIN & RATHBONE,
Solicitors for Defendant Central Trust Company of New York.

NEW YORK RAILWAYS COMPANY, et al. 1171

Clerk's Certificate.

IN THE
UNITED STATES SUPREME COURT.

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN, and CHARLES E. LOXLEY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth and Twenty ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York as Trustee,

Plaintiffs, 1172

against

NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY and CENTRAL TRUST COMPANY OF NEW YORK,

Defendants.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above entitled matter as agreed on by the parties. 1173

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 28th day of February, in the year of our Lord on thousand nine hundred and seventeen and of the Independence of the said United States the one hundred and forty-first.

ALEX. GILCHRIST, JR.,
Clerk.

[SEAL]

MAR 14 1917
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States

October Term, 1916.

JOHN W. HAHER, ET AL.,
PETITIONERS,

vs.

NEW YORK RAILWAYS COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1916.

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRIT TAYLOR, HORACE A. DOAN, CHARLES E. LOXLEY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, secured by a certain mortgage dated October 1st, 1896, to Central Trust Company of New York, as Trustee,

Appellants,

against

NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY and CENTRAL TRUST COMPANY OF NEW YORK.

No. 968.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE.

Come now the appellants by their counsel, and move the Court to advance the above entitled cause for hearing during the present term.

The question presented is one solely of jurisdiction, that is, whether the United States District Court has jurisdiction because of diverse citizenship, the amount involved being upwards of Three thousand ($3,000) dollars.

All of the appellants, plaintiffs in the action which is in equity, are non-residents of the State of New York, and all of the defendants are residents of the State of New York.

The action was brought by the plaintiffs against the defendants to declare the property of the defendant, New York Railways Company, liable for a debt of the Metropolitan Street Railway Company to the plaintiffs, upon the authority of the case of Northern Pacific Railway Co. v. Boyd, 228 U. S., 482, and Kansas City Southern Railway Company against Guardian Trust Company, 240 U. S., 166.

The action involves upwards of Two million ($2,000,000) Dollars. It was begun in October, 1913, and came on for final hearing before Hon. Charles M. Hough, Judge of the United States District Court, for the Southern District of New York, who made the decree appealed from dated May 29th, 1916, dismissing the cause "for want of jurisdiction in this Court to hear and determine the issues upon its merits, without costs," and under date of June 29, 1916, made a certificate in conformity to the Act of Congress of March 3, 1891, Chapter 517, "that the jurisdiction of this Court is in issue and that the judgment of dismissal herein made is based solely upon the ground that the record does not show that the controversy involved is one between citizens of different States." The Court below realigned the parties by making the defendant, the Central Trust Company, a party complainant; and the question involved in this case is whether the

parties must be realigned and whether the Central Trust Company is a necessary or proper party to the action. No question other than the question of jurisdiction is involved.

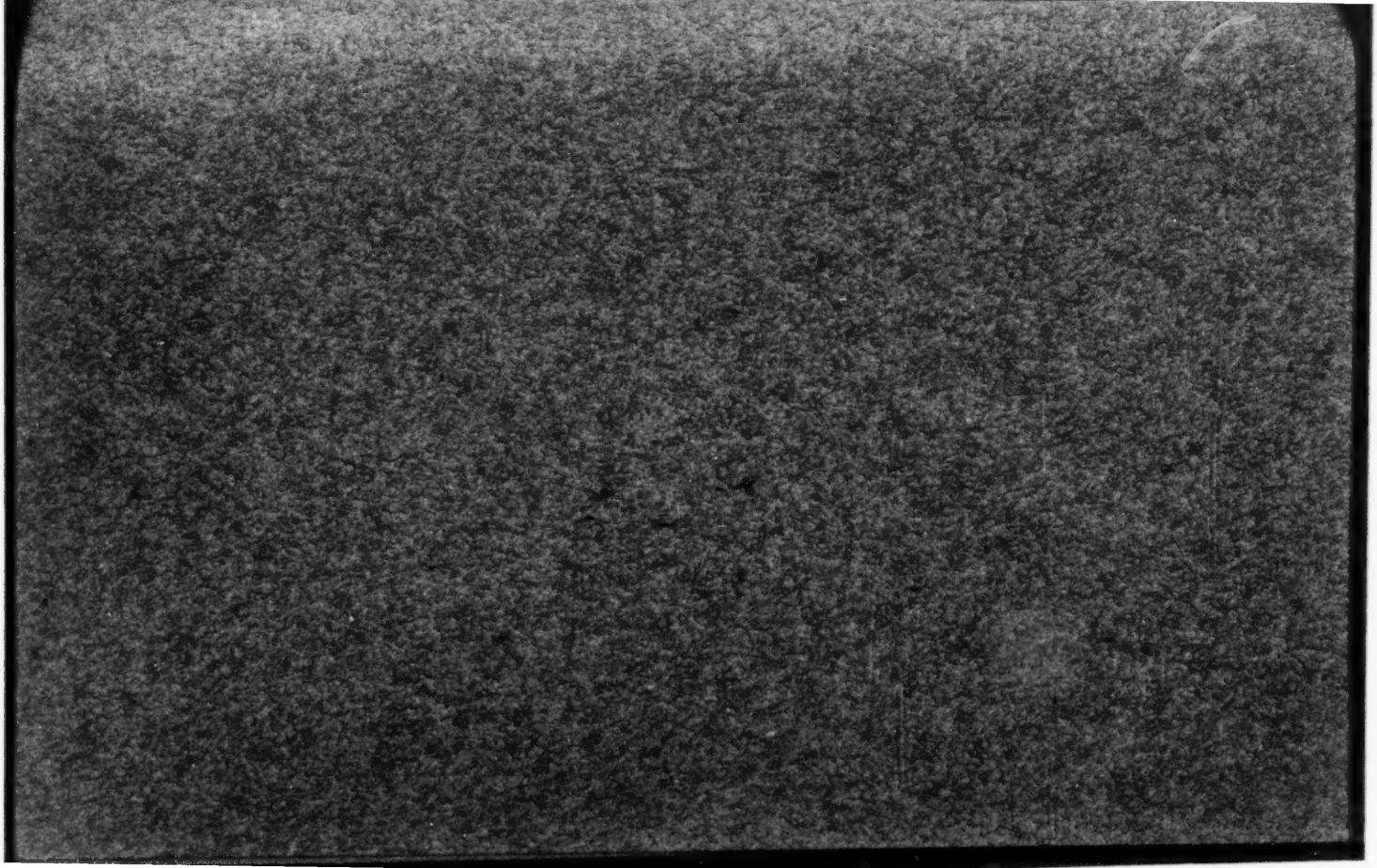
If the United States District Court has no jurisdiction to determine the merits of the controversy, and it becomes necessary to institute an action in the State Court, such action should be brought before December 31, 1917, or it may be barred by a statute of limitations.

As the single question of jurisdiction involved will not require extended argument, it is respectfully submitted that the case is a proper one to be placed on the summary docket.

Notice of this motion has been served on opposing counsel.

Dated, March 5, 1917.

A. S. GILBERT,
WILLIAM J. HUGHES,
Counsel for Petitioners.



SYNOPSIS.

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Am. & Eng. Enc. of Law, Vol. 7, p. 110 6
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Supreme Court of the United States

OCTOBER TERM, 1916.

No. 968.

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN and CHARLES E. LOXLEY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth & Twenty-ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York, as Trustee,

Appellants,

against

NEW YORK RAILWAYS COMPANY, METROPOLITAN STREET RAILWAY COMPANY,

Appellees,

and CENTRAL TRUST COMPANY OF NEW YORK.

In Equity.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF OF APPELLANTS.

Statement.

This is an appeal from a decree of the United States District Court for the Southern District of

New York dismissing a bill in equity for want of jurisdiction.

Facts.

The facts, in so far as they are material to the question of jurisdiction presented on this appeal, are as follows:

On or about September 29th, 1896, the Twenty-eighth & Twenty-ninth Streets Crosstown Railroad Company entered into an agreement in writing with the Metropolitan Street Railway Company, pursuant to which the railroad property belonging to the Twenty-eighth & Twenty-ninth Streets Crosstown Railroad Company was turned over to the Metropolitan Street Railway Company, to be operated by the latter company as part of its railroad system in the City of New York. Under this agreement the Metropolitan Company agreed to pay the principal and interest of bonds to be issued by the Twenty-eighth & Twenty-ninth Streets Company (pp. 13-14).

On October 1, 1896, the Twenty-eighth & Twenty-ninth Streets Company issued its gold bonds to the extent of $1,500,000 and executed a trust mortgage covering its property to the Central Trust Company of New York to secure this bond issue (pp. 5-11).

After the authentication of the bond by the Trust Company, the Metropolitan Street Railway Company endorsed on each bond the following guarantee:

> "For Value Received, the Metropolitan Street Railway Company hereby guarantees to the Trustee of the within-mentioned mortgage, for the benefit of the holders thereof, punctual payment of the principal of the within bond and the interest thereon at the

time and in the manner therein specified and according to the tenor of the several coupons belonging thereto.

IN WITNESS WHEREOF the said The Metropolitan Street Railway Company has caused its corporate name to be signed hereto by its President, or Vice-President, and its corporate seal to be affixed and attested by its Secretary or Assistant Secretary this first day of October, 1896.

THE METROPOLITAN STREET RAILWAY COMPANY,

By H. H. VREELAND,
(Corporate Seal) President.

Attest:
CHARLES E. WARREN,
Secretary."

(pp. 15; 241-242).

The bonds of the Twenty-eighth & Twenty-ninth Streets Company thus secured by mortgage, and guaranteed by the Metropolitan Company, were sold to the public, and in July, 1898, were owned by persons in various parts of the United States, including residents of the State of New York.

In September, 1907, the Metropolitan Street Railway Company became insolvent and receivers of its property were appointed by the United States Circuit Court for the Southern District of New York. These receivers of the Metropolitan Company operated the road of the Twenty-eighth & Twenty-ninth Streets Company until on or about October 1, 1908 (p. 19), and continued to pay the interest on the bonds of the Twenty-eighth & Twenty-ninth Streets Company up to and including April 1, 1908 (p. 16).

On July 22, 1908, a bondholders' committee of the Twenty-eighth & Twenty-ninth Streets Company was formed, consisting of the plaintiffs in this action (p. 166). Owners of bonds to the extent of $1,373,000 became parties to a bondholders' agreement by depositing their bonds, and under this agreement the plaintiffs as such committee were vested with the legal title to the bonds thus deposited (pp. 184-193; 170-171).

The receivers of the Metropolitan Company having failed to pay the interest falling due October 1, 1908, and the default having continued for six months, the Central Trust Company, as trustee, brought an action in the Supreme Court of the State of New York to foreclose the mortgage securing said bond issue (p. 20). For the purpose of liquidating the claim against the Metropolitan Company on the guaranty, the Central Trust Company, by leave of the United States Circuit Court for the Southern District of New York, made the Metropolitan Company a party defendant (pp. 20-21).

That action resulted in a judgment in favor of the Trust Company directing a foreclosure of the mortgage and holding the Metropolitan Company liable on its guaranty for any deficiency (p. 23). The property covered by the mortgage was thereafter sold pursuant to the terms of the judgment and resulted in a deficiency of $1,745,344.21, for which judgment was docketed against the Metropolitan Company on February 20, 1912 (p. 23).

On or about January 1, 1912, the property formerly belonging to the Metropolitan Company came into possession of the defendant New York Railways Company under the circumstances disclosed in the bill of complaint (p. 26).

The plaintiffs thereupon brought this suit in the United States District Court, Southern District of New York, in equity, alleging facts which, if proved, brings this case squarely within the law as established by this Court in *Northern Pac.* v. *Boyd*, 228 U. S., 482, and *Kansas City Southern Ry. Co.* v. *Guardian Trust Co.*, 240 U. S., 166, entitling the plaintiffs to equitable relief against the New York Railways Company. The Central Trust Company, in whose name the claim against the Metropolitan Company on the guaranty was liquidated into a judgment, was made a party defendant.

All of the plaintiffs are citizens and residents of states other than the State of New York, and all the defendants are citizens and residents of New York (pp. 4-5).

Testimony having been taken before a standing examiner, the cause came on for final hearing before Hon. CHARLES M. HOUGH, *U. S. D. J., S. D. N. Y.*, who realigned the parties, making the defendant Central Trust Company a party plaintiff, and dismissed the bill on the sole ground of want of jurisdiction in the court (p. 374).

If the plaintiffs have a cause of action in them, unaffected by any rights of the Central Trust Company, so that the Central Trust Company is an unnecessary party to the action, the decree appealed from must be reversed; if, on the other hand, the Central Trust Company is an indispensable party to the action, the decree must be affirmed.

POINT I.

The guaranty endorsed on the bonds being to the Central Trust Company, "for the benefit of the holders thereof," was in effect a guaranty of payment directly to the holder of each bond, vesting in the holders of the bonds a cause of action on which they could sue in their own name.

Hendrick v. *Lindsay*, 93 U. S., 143.
Austin v. *Seligman*, 18 Fed., 519, 522.
Welden Nat'l Bank v. *Smith*, 86 Fed., 398, 402.
Barker v. *Pullman Palace Car Co.*, 124 Fed., 555.
Jacoby v. *Jacoby*, 188 N. Y., 124.
Gucutal v. *Gucutal*, 113 A. D. (N. Y.), 310.
Keeler v. *Ashford*, 133 U. S., 610.
Tanzer & Co. v. *Chicago, R. I. & P. R. R. Co.*, 170 Fed., 247.
Willard v. *Wood*, 164 U. S., 519.
Vroonam v. *Turner*, 69 N. Y., 281.
Goodyear Shoe Machinery Co. v. *Daneel*, 144 Fed., 679.
Am. & Eng. Enc. of Law, Vol. 7, p. 110.

Argument.

We contend that the guaranty endorsed on each bond must be treated as if it read "the Metropolitan Street Railway Company hereby guarantees to the holder hereof punctual payment of the principal." Whatever the purpose may have been in making the contract of guaranty run to the Central Trust Company "for the benefit" of the bond-

holders, the effect is a guaranty to the bondholders themselves.

All the authorities seem to agree that where a contract is made for the benefit of a third person and the party sought to be charged has received property which in equity and good conscience belongs to the third person, the third person has a cause of action in his own name in a court of equity.

It may well be that the promise running to the Central Trust Company, it was justified in liquidating the claim, as it did, for the benefit of the bondholders; but that right in the Trust Company in no way affected the right of the bondholders to assert their title to the claim when liquidated.

N. Y. Code Civil Proc., Sec. 449.
Greene v. *Ins. Co.*, 84 N. Y., 572.
Rules of Practice for the Courts of Equity of the United States No. 37.

Attention is called to the fact that the claim on which this action is based is not upon the bonds executed by the Twenty-eighth & Twenty-ninth Streets Crosstown Railroad Company which were secured by a trust mortgage to the Central Trust Company, but upon a guaranty of the payment of those bonds executed by the Metropolitan Street Railway Company.

As to the bonds themselves, no cause of action vested in any one bondholder; all rights to sue on the bonds and to foreclose the mortgage were in the Central Trust Company, as trustee, and the bondholders were bound by the terms of the trust mortgage.

But the rights of the bondholders against the Metropolitan Company on the guaranty were entirely separate and distinct from their rights

against the Twenty-eighth & Twenty-ninth Streets Company on the bonds.

No agreement of any kind affected the terms of the guaranty. There was no agreement between the Metropolitan Street Railway Company and the Trust Company. The Trust Company assumed no obligation or duty with reference to the guaranty. *The trust mortgage makes no reference to it.* So far as the liability of the Metropolitan Company to the bondholders was concerned, the promise might have been to an entire stranger to the transaction for the benefit of the holders of the bonds.

The purpose of the guaranty endorsed on these bonds was to make them attractive to investors. The bill alleges that they were bought in the open market, in reliance on the guaranty, and we submit that any bondholder could have sued on the guaranty, or all of them could have permitted the promisee for their benefit to liquidate the claim, as was done in this case.

POINT II.

The judgment obtained by the Central Trust Company against the Metropolitan Street Railway Company having been obtained for the benefit of the holders of the bonds, belongs to the holders of the bonds, and the Central Trust Company has no right, title or interest therein or duty with reference thereto.

American & English Encyclopedia of Law, Vol. 28, p. 920.

Greene v. *Ins. Co.*, 84 N. Y., 572.

Welch v. *Allen and ano.*, 21 Wend., 147.

Lawrence v. *Fox*, 20 N. Y., 268.

Matter of Livingston, 34 N. Y., 555.
Watkins v. *Reynolds,* 123 N. Y., 211.
See, also, cases cited under Point I.

Argument.

This case is not distinguishable in principle from the case of *Greene* v. *Ins. Co.* (*supra*) or from the long line of cases holding that a promise for the benefit of a definite third person may be enforced by such third person.

In the *Greene* case a judgment obtained in Mississippi in favor of the plaintiff in that action, "for the benefit" of a third person, was held to be the property of the beneficiary.

And so in this case, the Central Trust Company obtained a judgment on the guaranty "for the benefit" of the bondholders. The claim on the guaranty has been liquidated. This liquidated claim on the guaranty, which always belonged to the bondholders, now, in the shape of a judgment, is still a demand running to the Central Trust Company "for the benefit" of the bondholders and belongs to them. If we are correct in our contention that the unliquidated claim belonged to the bondholders, it must follow that the claim, though liquidated, remains their property.

In discussing the *Greene* case (*supra*), the learned District Judge says (p. 370):

> "But the holding in that case was no more than that a 'use plaintiff' under the practice at common law was but the *alter ego* of the party on whose behalf he sued, and not a trustee at all."

The *Greene* case arose under Section 449 of the New York Code of Civil Procedure. That section of the Code is almost identical with Equity Rule 37. An examination of Equity Rule 37 and of Section 449 of the New York Code will show that the purpose of both the rule in equity and the Code provision was that actions should be brought by the real party in interest. In both the equity rule and the Code provision it is expressly provided that "an executor, administrator, guardian, trustee of an express trust," may sue in his own name without joining with him the party for whose benefit the action is brought, and both the equity rule and the Code provision make special reference to the fact that "a party with whom or in whose name a contract has been made for the benefit of another" may likewise sue in his own name without joining with him the party for whose benefit the action is brought. As a short cut, the Code provision declares that "a person, with whom or in whose name a contract is made for the benefit of another, is a trustee of an express trust, *within the meaning of this section.*" The addition of the words "within the meaning of this section" makes it perfectly clear that without the express provision applicable to the case of a contract made with one for the benefit of another, the cause of action would be solely in the person for whose benefit the contract was made and no action could be begun by the person to whom the promise or with whom the contract was made. There is no difference between a judgment obtained by one for the "use of another" and a judgment obtained by one for the "benefit of another." Assuming that this contract of guaranty was made in the State of New Jersey to a New Jersey trust company for the benefit of bondholders, and that the State of New Jersey had a

provision in its Code of Procedure similar to the Code provision in New York permitting the trust company to whom the promise was made for the benefit of the bondholders to sue on the promise for the benefit of all the bondholders, under which the trust company took judgment, and an action were brought in the State of New York under Section 449 of the Code by the bondholders on the judgment thus obtained in New Jersey for their benefit; would not the action on that judgment be maintainable in New York by the bondholders under Section 449 of the Code on precisely the same theory as the Court maintained the right of the plaintiff in the *Greene* case to sue on the judgment obtained in the State of Mississippi?

The Central Trust Company in the action against the Metropolitan Street Railway Company was in precisely the same situation as the firm of William R. Greene & Co. was in obtaining the judgment against the insurance company in the State of Mississippi. The language used by Judge MILLER of the New York Court of Appeals in the *Greene* case is so clearly applicable to the case at bar that we quote as follows, from page 575:

> "The plaintiff in such an action is merely a nominal party. He has no actual interest in the suit, cannot control it, nor in any way interfere with the rights of the real party; nor is he a trustee in any sense, as he has no authority whatever. The owner alone is the real party, and it is only by reason of the rule referred to, which in this State has been superseded by the Code, that the action is brought in this form. The judgment belongs to the owner quite as much as if he was named as the plaintiff, and under the Code he alone can sue to recover the same."

POINT III.

A mere formal or nominal party must be disregarded in determining the question of jurisdiction.

Sharpe v. *Bonham*, 224 U. S., 241.
Walden v. *Skinner*, 101 U. S., 577.
Wormley v. *Wormley*, 8 Wheat., 421.
Wood v. *Davis*, 18 How., 467.
State v. *Baldwin*, 112 U. S., 490.
Hatch v. *Chicago Co.*, 6 Blatch., 105.
Bacon v. *Rives*, 106 U. S., 99.
Bates v. *W. O. Co.*, 16 Fed., 294.
Sioux City v. *Chicago Co.*, 27 Fed., 770.
New Chester Co. v. *Holly Mfg. Co.*, 53 Fed., 19.
Rogers v. *Penobscot Mining Co.*, 154 Fed., 606, 610.

Argument.

In *Sharpe* v. *Bonham* (*supra*) this Court, by HUGHES, *J.*, said:

> "These trustees were not indispensable parties complainant, as alleged in the plea, and, as mere title holders, they were properly made parties defendant. The court erred in aligning them with complainants."

And so in this case, as we have pointed out, the Central Trust Company is a mere title holder. The real party in interest is the bondholder. The Trust Company is not the owner of the claim; it owes no duty to these plaintiffs or the other bondholders with reference thereto. Of course, its interest is not antagonistic to these plaintiffs. In the nature

of things, it must wish the success of the plaintiffs. But the result in no way affects the Trust Company. It has no interest in the result. It need not have been made a party. The rights of the parties can be adjudicated without having the Trust Company in court.

In the court below, counsel for appellees cited *Stephens* v. *Smart* (172 Fed., 466) to support the proposition that the Court must refuse jurisdiction "if the Central Trust Company be nothing more than a proper party."

But that case must be regarded as overruled by *Sharpe* v. *Bonham* (*supra*).

> 1 *Foster's Fed. Pr.*, 5th Ed., last note p. 111.

The learned District Judge was of opinion that the Central Trust Company was an indispensable party to the action, because, unless a party, the defendants could not safely make payment to the plaintiffs. He asks (p. 372), "If the trustees were left out of the suit, how could the defendants safely make payment if they wished to?"

No relief is asked in this action against any of the parties except the New York Railways Company (Equity Rule 40). The plaintiffs in this action ask for a judgment declaring the property formerly of the Metropolitan Company and now in the possession of the New York Railways Company, to be burdened with the obligation to pay the debt of the Metropolitan Company to the bondholders under the guaranty, as liquidated by the judgment of the Central Trust Company against the Metropolitan Street Railway Company. Until there be a decree of this Court in favor of the plaintiffs, adjudging the property of the New York Railways

Company to be subject to the payment of the debt to these plaintiffs, it is not burdened by the lien of any judgment or decree. And that burden will be discharged and relieved when the New York Railways Company shall pay, satisfy or otherwise discharge the judgment or decree which these plaintiffs shall obtain against it.

The Central Trust Company could never sue the New York Railways Company on its judgment or on the debt which it liquidated for two reasons: (1) because it is not the owner of the claim (Points I and II, *supra*), and (2) because the payment to these plaintiffs would be a discharge of the obligation to the Central Trust Company made for the benefit of these plaintiffs.

The plaintiffs have brought this action as the owners of $1,373,000 face value of the bonds. The bill of complaint alleges that the balance of the bonds, namely, $127,000, is outstanding in the hands of a number of persons, "the names of many of such persons being unknown to the plaintiffs" (p. 10). The plaintiffs are vested with a cause of action as absolute owners of certain of the bonds and as part of a class, to sue not alone in their own behalf but for the benefit of the class.

Equity Rules Nos. 37, 38 and 39.

So that the judgment of the Court may properly be, if we succeed upon the merits of the action, in such form as will not alone adjudicate the rights of the plaintiffs, but of all other persons similarly situated who may come in and share in the expense of the action, thus avoiding a multiplicity of suits, protecting the New York Railways Company against a number of actions, and establishing in one action the rights of all bondholders on the

guaranty, or the judgment liquidating the same against the New York Railways Company.

If we are correct in our claim that the Court below has jurisdiction of the parties and of the cause of action, the precise form of relief is a matter of detail. The bill of complaint prays for general relief (p. 34).

The Court dismissed the action "on the ground * * * that the guaranty was merged in the judgment, and this action is on the judgment, and upon the further ground that the Trust Company is an active trustee and the legal owner of the judgment in question" (p. 372).

For the purpose of this discussion, we shall assume that the claim on the guaranty merged in the judgment. But even if we assume that proposition, we insist that the judgment obtained by the Central Trust Company against the Metropolitan Street Railway Company was nothing more than a liquidated promise by the Metropolitan Street Railway Company to the Central Trust Company for the benefit of the owners of the guaranty to pay the amount of such liquidated claim.

We have previously in this brief pointed out that the original promise by the Metropolitan Street Railway Company to the Central Trust Company for the benefit of the holders of the bonds to pay the principal and interest of the bonds was a promise in favor of the holder of the bond, on which he might sue directly. The judgment did no more than liquidate that claim. The promise remained the same. The *Gutta Percha* case (108 N. Y., 276), referred to by the learned District Judge, is authority for the proposition that although the guaranty may have merged in the judgment, the judgment is nothing more or less than an implied promise to pay the debt liquidated in accordance with

the terms of the judgment. We quote the language of EARL, *J.*, at page 278:

> "After the recovery of this judgment, whether it was recovered for a tort or upon contract, the recovery became a debt which the defendant was under obligations to pay, and the law implied a promise or contract on his part to pay it."

And so in the case at bar, the result of the judgment obtained by the Central Trust Company against the Metropolitan Street Railway Company was an implied promise on the part of the Metropolitan Street Railway Company to pay to the Central Trust Company a liquidated amount representing the amount due the holders of the bonds on the guaranty, but upon the same terms as the promise itself, namely, "for the benefit" of the holders of the bonds.

The learned District Judge by his reference to the case of *Watson* v. *Chicago, Rock Island & Pacific Railroad Co.* (169 A. D., N. Y., 663) apparently assumed that the trust mortgage related in some manner to the guaranty; or, putting it another way, that the rights of the holders of the bond to recover against the Metropolitan Street Railway Company on the guaranty were in some manner affected by the terms of the trust mortgage; but that is not the fact. The trust mortgage made no reference of any kind to the guaranty. The Central Trust Company assumed no burden or responsibility with reference to the guaranty. There is no stipulation in the mortgage that the holder of each bond may not sue independently of other holders of bonds upon the guaranty. The Court in the *Watson* case (*supra*) held that the holder of one of a series of bonds issued under a trust mortgage which provided in

terms that no one bondholder should sue, but that the trustee should act for all, cannot maintain an action against the debtor on his bond; but the decision in that case turned upon the terms of the contract. In the case at bar, no contract exists which affects the right of the holder of one bond to sue upon his guaranty.

The guaranty by its terms provides that the Metropolitan Company will pay "the principal of the within bond and the interest thereon at the time and in the manner therein specified and according to the tenor of the several coupons belonging thereto." No language is contained in this guaranty limiting the right of any holder of a bond. The guaranty was not secured in any form. It was an entirely independent obligation. It was not like the coupon discussed by the Court in the *Watson* case (*supra*). The coupon is part of the bond obligation, and, as pointed out by the Court of Appeals of the State of New York in *Bailey* v. *County of Buchanan* (115 N. Y., 297), the coupons "are secured by the same mortgage."

Under the trust mortgage to the Central Trust Company, the rights, duties and obligations of the trustee are precisely the same with reference to the coupons as they are with reference to the bonds; but that is not so as to the guaranty. An examination of the language of the mortgage in contrast with the language of the guaranty will forcibly point out the difference between the two instruments. By the terms of the mortgage (pp. 200-201) the mortgagor granted, bargained, sold, aliened, remised, released and conveyed its property unto the Central Trust Company of New York. It was a conveyance in trust subject to the provisions of the instrument (p. 201). And "the trusts, uses, purposes, conditions and covenants for

and upon which the property hereinbefore described is conveyed to the trust company, and is to be held and disposed of by the trust company" (p. 203) are set forth in great detail beginning at page 203, folio 608 of the record. The guaranty, on the other hand, is simply a promise "to the trustee of the within mentioned mortgage, for the benefit of the holders thereof, of punctual payment of the principal of the within bond and the interest thereon." In the case of the mortgage, we have an active trust with duties and obligations and responsibilities in the trustee. In the case of the guaranty, however, we have a mere naked promise to one for the benefit of another.

The Central Trust Company was not a trustee for these plaintiffs and the others holders of the bonds; it was a mere *alter ego* and was precisely the kind of a "use plaintiff" which the plaintiff in the *Greene* case (*supra*) was said to be. A person to whom a promise is made for the benefit of another can never be said to be a trustee for the person for whose benefit the promise is made, unless, of course, the promise is in the nature of a trust agreement imposing burdens, obligations and responsibilities upon the trustee and putting the legal title to the claim representing the promise in him as said trustee.

The Court below states (p. 370):

> "no way has been pointed out by which the Central Trust Company is now or ever had been divested of its trusteeship *in toto*."

But there is no trust obligation in the Central Trust Company. As we have before stated, our contention is that the judgment in the name of the Central Trust Company is no more than the liquidated promise which theretofore stood in its name.

The Court below also makes the statement (p. 371):

> "Indeed, in my opinion the Central Trust Company is a most active trustee in respect of this judgment. It assumed new duties by entering the judgment, viz., to ascertain who owned the bonds on behalf of which judgment was entered."

But there is no instrument in writing or otherwise which p[illegible]is or any other obligation on the Central [illegible]mpany. If there be any such obligation on t[illegible]entral Trust Company, it must be shown somewhere or somehow, so that if the Trust Company should fail in its duties to the bondholders it might be held responsible. A person surely cannot be made responsible as trustee without his consent nor can burdens and obligations be put upon a trustee to which he has not assented. The Central Trust Company never agreed to act as a trustee with relation to the guaranty. According to the bill of complaint (p. 13), the defendant Central Trust Company "duly accepted the trust created in and by the said mortgage and as evidence of its acceptance thereof united in the execution of the same" (p. 13). It nowhere appears that the Trust Company by any other instrument or in any other form assumed any duty or obligation with reference to the guaranty and apparently this guaranty was endorsed on the bonds after they had been certified by the Trust Company under the terms of the trust mortgage (p. 241).

POINT IV.

The Court below had jurisdiction of the cause, independently of diversity of citizenship.

Wabash R. R. Co. v. *Adelbert College etc.*, 208 U. S., 38, at p. 53.

Argument.

The property of the Metropolitan Street Railway Company came into possession of the New York Railways Company by virtue of decrees of foreclosure and sale made by the United States Circuit Court, Southern District of New York. The bill of complaint contains allegations which, under the *Boyd* case (*supra*), preserved the plaintiffs' equitable lien as creditors of the insolvent corporation from being cut off by the foreclosure as against the stockholders under the plan of reorganization.

We contend that the parties taking title under a decree and deed obtained pursuant to such a plan of reorganization must be deemed to have taken it charged in the same manner as if the Court, by its decree, had expressly preserved the creditors' rights. In the same manner as these rights were preserved by operation of law, the Court could, in advance, have preserved such a lien by its foreclosure decree if the plan of reorganization had formally been submitted to it for approval. The plan was never formally presented to the Court. The creditors whose claims were sought to be cut off by the plan, were not heard. The plan being condemned by the *Boyd* case, it cannot be assumed that equity intended its decree to result inequitably.

The decree being asserted to sustain an inequitable result, the Court making that decree has jurisdiction to construe its effect based on its original jurisdiction.

In the case of *Wabash R. R. Co.* v. *Adelbert College* (*supra*) the Court held that where the controversy involved the effect of conveyances made pursuant to decrees of foreclosure by a federal court, reserving claims on liens not adjudicated in the foreclosure action, the person claiming such lien so reserved by the decree, could subsequently have that question determined in the federal court by plenary suit independently of diversity of citizenship even after the court had parted with the possession of the property.

We submit, under the *Boyd* case, as a condition of making its decree to insure equity, the Court has power (which hereafter may be wisely exercised) to require a disclosure as to the purpose of the decree and a submission in advance of the plan of reorganization which the Court's decree is intended to effectuate. If the rights of creditors are not disclosed in advance for the protection by decree, the law will imply the same reservation which the Court would, under the *Boyd* case, be authorized to make.

Whether the reservation of equitable liens in the decree and deed is implied by law or by express provision can make no difference. If the federal courts have original jurisdiction independently of diversity of citizenship in the one case, they have in the other, and under the principle of the *Wabash* case (*supra*), the Court below had jurisdiction of this cause aside from the question of diversity of citizenship.

POINT V.

We respectfully submit that the decree appealed from must be reversed.

A. S. GILBERT,
Counsel for Appellants.

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JAMES D. MAHER
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Supreme Court of the United States

OCTOBER TERM, 1916.

No. 968.

JOHN W. HAMER, W. C. HEPPENHEIMER, A. MERRITT TAYLOR, HORACE A. DOAN and CHARLES E. LOEHAY, on behalf of themselves and all other holders of bonds issued by the Twenty-eighth & Twenty-ninth Streets Crosstown Railroad Company and secured by a certain mortgage dated October 1, 1896, to Central Trust Company of New York, as Trustee,

Appellants,

against

NEW YORK RAILWAYS COMPANY and METROPOLITAN STREET RAILWAY COMPANY,

Appellees,

and CENTRAL TRUST COMPANY OF NEW YORK.

In Equity

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLEES

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLEES.

Statement.

The question involved in this case is whether the Central Trust Company, a corporation of the State

of New York, is such a proper, necessary or indispensable party to the action as to defeat the jurisdiction of the United States courts.

The action is one invoking the original jurisdiction of the United States courts upon the ground of diverse citizenship, and not upon the theory that it is ancillary to any proceeding pending in the Federal court (Rec., p. 4).

The Central Trust Company, which is a citizen of the same State as the defendants below, the Metropolitan Street Railway Company and the New York Railways Company, by its answer has aligned itself with the plaintiff and sought the identical relief prayed for by them, and it is agreed by the appellants that if it is an indispensable party the decree below must be affirmed upon the ground of lack of jurisdiction. While agreeing to this, the appellees further insist that even if it is only a proper and necessary party, under the circumstances of this case the judgment below must likewise be affirmed.

In the fall of 1911 the bondholders of the Metropolitan Street Railway Company carried through a plan of reorganization, whereby upon the 30th day of December of that year the property of the Metropolitan Street Railway Company was sold under foreclosure proceedings and transferred to the New York Railways Company, a corporation created for the purpose of taking over the property under the reorganization agreement. At this time there was pending in the Supreme Court of the State of New York an action by the Central Trust Company to foreclose a mortgage of the Twenty-eighth & Twenty-ninth Streets Crosstown Railroad Company securing an issue of $1,500,000 mortgage bonds, of which mortgage the Central Trust Company was trustee. In this suit the Metropolitan

Street Railway Company was made a party defendant by the Central Trust Company to enforce against it the following guarantee delivered with the mortgage (Complaint, Rec., p. 15; Opinion, Rec., p. 369), and also stamped upon the individual bonds:

> "FOR VALUE RECEIVED, the Metropolitan Street Railway Company hereby guarantees to the Trustee of the within-mentioned mortgage, for the benefit of the holders thereof, punctual payment of the principal of the within bond and the interest thereon at the time and in the manner therein specified and according to the tenor of the several coupons belonging thereto.
>
> "In Witness Whereof, the said The Metropolitan Street Railway Company has caused its corporate name to be signed hereto by its President, or Vice-President, and its corporate seal to be affixed and attested by its Secretary or Assistant Secretary this first day of October, 1896.
>
> THE METROPOLITAN STREET RAILWAY COMPANY
>
> By H. H. Vreeland,
> (Corporate Seal) President.
>
> Attest:
> Charles E. Warren,
> Secretary."

Upon the 4th day of January, 1912, and after the property had passed into the hands of the New York Railways Company, a judgment of foreclosure was entered in the State court action, and the property of the Twenty-eighth Street Company sold. Thereafter, upon the 20th day of February, 1912, upon the report of the Referee, a deficiency judgment was entered in the Supreme Court of New

York against the Metropolitan Street Railway Company by virtue of its guarantee running to the Central Trust Company, in the sum of $1,745,344.21 (Paragraph XXVI of Complaint, Rec., p. 23; Certificate of Judgment, Rec., p. 281).

The present action against the New York Railways Company was instituted by a committee of bondholders of the Twenty-eighth Street Railroad Company, representing $1,375,000 out of $1,500,000 bonds issued under the Twenty-eighth Street Company mortgage.

It is sought to apply to the New York Railways Company the doctrine of *Northern Pac. R. Co. v. Boyd*, 228 U. S., 482, and thus hold it liable for the payment of the judgment obtained against the Metropolitan Street Railway Company upon the ground that the reorganization plan made no provision for the claim represented by the judgment.

There are substantial differences between the *Boyd* case and the case at bar, but the merits of this question are not before this Court.

POINT I.

The Central Trust Company is an indispensable party to the action.

The action is brought, not upon the original guarantee executed by the Metropolitan Street Railway Company and delivered with the mortgage of the Twenty-eighth Street Company upon the date when that mortgage was executed, October 1, 1896, but upon the deficiency judgment obtained by the Central Trust Company, to whom the guarantee ran, in the State court proceeding (Rec., p. 23). The prayer of the complaint is:

> "That the transfer of said property, franchises and assets of the defendant Metropolitan Street Railway Company to the defendant New York Railways Company be adjudged null and void as against the Central Trust Company of New York as the holder of said deficiency judgment under said mortgage made by the said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, and as against the plaintiffs and such other bondholders secured by said mortgage as shall elect to come in and share the expenses of this action."

It is further prayed that all the property of the Metropolitan Street Railway Company acquired by the New York Railways Company

> "be declared to be subject to the lien of the said judgment obtained by the defendant Central Trust Company of New York against said defendant Metropolitan Street Railway Company in the sum of $1,745,344.21" (Rec., pp. 32, 33).

It is difficult to see how under these circumstances the Central Trust Company, which was the trustee to whom the original guarantee ran—although for the benefit of the bondholders—is not an indispensable party to this action, or, indeed, the only proper party to prosecute the same.

As was said by this Court in *Knapp* v. *Railroad Company*, 20 Wall., 117, 122, 123—a not dissimilar case—where trustees of a railroad mortgage had obtained possession of the property upon strict foreclosure and thereafter brought an action upon a lease which they had executed to the defendant:

> "It would seem that they not only had the right to sue, but that nobody else could sue.

> * * * They are the real plaintiffs in any suit brought to enforce a claim accruing to them in the execution of their trust, as much so as executors and administrators are, who also sue for the benefit of others and not themselves. Like them they control the litigation, and are charged with the responsibility of conducting it."

In *Richter* v. *Jerome*, 123 U. S., 233, 246, speaking of the exclusive power of a trustee to represent its bondholders, the Court said:

> "All the rights the bondholders have or ever had in the mortgage, legal or equitable, they got through the Trust Company, to which the conveyance was made for their security. As bondholders claiming under the mortgage, they can have no interest in the security except that which the trustee holds and represents. If the trustee acts in good faith, whatever binds it in any legal proceedings it begins and carries on to enforce the trust, to which they are not actual parties, binds them. *Kerrison* v. *Steward*, 93 U. S., 155, 160; *Corcoran* v. *Chesapeake &c. Canal Co.*, 94 U. S., 741, 745; *Shaw* v. *Railroad Co.*, 100 U. S., 605, 611. Whatever forecloses the trustee, in the absence of fraud or bad faith, forecloses them. This is the undoubted rule."

The principle has long since been established and universally accepted by the courts that a claim or demand put in suit and passing to a final judgment becomes merged and swallowed up in the judgment, loses its vitality, and cannot thereafter be used either as a cause of action or as a set-off. It is the general rule that all the peculiar qualities of the claim become merged in the judgment, which then stands on the same footing as all other judg-

ments. This rule applies to all species of demands, including contracts, bonds, promissory notes—even to demands founded upon earlier judgments. As a general rule, the recovery of a judgment creates a new debt or liability distinct from the original claim or demand, and this new liability is not merely the evidence of the creditor's claim, but is the substance of the claim itself. This is the law in the State of New York.

> *Gutta Percha & R. Mfg. Co.* v. *Mayor*, 108 N. Y., 276, 278.
>
> *Watson* v. *Railroad Company*, 169 App. Div., 663.

It is likewise the law in the courts of the United States.

In *United States* v. *Price*, 9 How., 83, 91, 94, it was held that a surety's liability upon a joint and several bond became merged in a joint judgment against all the obligors, to such an extent that the holder of the bond could not thereafter proceed against the executor of a deceased surety for the purpose of holding the assets of the estate responsible. The Court said:

> "One judgment against all or each of the obligors is a satisfaction and extinguishment of the bond. It no longer exists as a security, being superseded, merged, and extinguished in the judgment, which is a security of a higher nature. The creditor has no longer a remedy, either at law or in equity, on his bond, but only on his judgment. The obligor is no longer bound by the bond; but by the judgment, it has become the evidence of his indebtedness, and the measure of his liability."

Such being the case, it would seem to follow that the Central Trust Company, which is the holder of the judgment and secured the same with the complete consent of the bondholders, is the only proper party to prosecute any actions founded upon the judgment against this appellee. Indeed, if the Central Trust Company had been omitted as a party, the New York Railways Company might properly have pleaded a non-joinder. The Railways Company has the right that in the one action now pending all demands against it founded upon the judgment shall be finally and conclusively settled, and that it shall not hereafter be subjected to a multiplicity of similar actions upon the same judgment by other bondholders certainly not now before the Court unless they be deemed to be represented by the Central Trust Company. The Trial Judge properly observed:

> "If the trustee were left out of the suit how could the defendants safely make payment if they wished to? Plainly they could not, and they are therefore entitled to have the trustee in the action" (Rec., p. 372).

The jurisdictional principle involved in this case was early settled by the decisions of this Court.

In *Bonnafee* v. *Williams et al.*, 3 How., 574, 577, a promissory note had been executed, payable to "Cowles Meade, or bearer, for the use of the Real Estate Banking Company of Hinds County." Meade subsequently transferred the note to the plaintiffs. The defendants demurred upon the ground that the Court was without jurisdiction, because, although the nominal bearers, the plaintiffs were citizens of a state other than the state of the defendants, yet "those for whose benefit the suit is

brought" were citizens of the same state. The Court said:

> "The notes in question passed by delivery, and the plaintiffs, as bearers, have a right to sue in their own names, as the promise to pay is made to bearer. The plaintiffs allege that they are citizens of New York, and, consequently, the Circuit Court had jurisdiction of the case. Where the citizenship of the parties give jurisdiction, and the legal right to sue is in the plaintiff, the court will not inquire into the residence of those who may have an equitable interest in the claim. They are not necessary parties on the record. A person having the legal right may sue, at law, in the federal courts, without reference to the citizenship of those who may have the equitable interest. *Irvine* v. *Lowry*, 14 Pet., 298."

The same doctrine is applied to executors and trustees. *Coal Company* v. *Blatchford*, 11 Wall., 172, 175, 177. In that case the Court referred to the "universal rule" laid down by Chief Justice MARSHALL in *Osborn* v. *The Bank of the United States*, 9 Wheat., 738, that in controversies between citizens of different states the jurisdiction of the Federal Court depends not upon the relative situation of the parties concerned in interest, but upon the relative situation of the parties named in the record. The distinction between the position of a trustee as a necessary party and mere nominal parties is thus noted:

> "There is no analogy between these cases and the case at bar. The nominal plaintiffs in those cases were not trustees, and held nothing for the use or benefit of the real parties in interest. They could not, as is said in *McNutt* v. *Bland*, prevent the institution or prosecution of the actions or exer-

> cise any control over them. The justices of the peace in the one case, and the governor in the other, were the mere conduits through whom the law afforded a remedy to the parties aggrieved.
>
> In the case at bar the plaintiffs are the real prosecutors of the suit. They are parties to the mortgage contract negotiating its terms and stipulations, and to them the usual rights and powers of mortgagees are reserved, and to them the usual obligations of mortgagors are made. The right to use different remedies is expressly provided upon default in the payments stipulated, and the adoption of either rests at the option of the plaintiffs. So long as they do not refuse to discharge the trusts reposed in them, other parties are not authorized to institute or prosecute any proceedings for the enforcement of the mortgage, or to exercise any control over them."

Similarly, in *Mexican Central Railway Co. v. Eckman*, 187 U. S., 429, 434, 436, an action brought by a general guardian to recover for personal injuries sustained by his ward, the Court held that it was on the guardian's citizenship, and not on the citizenship of the ward, that the jurisdiction of the Circuit Court depended. The Court said:

> "If in the State of the forum the general guardian has the right to bring suit in his own name as such guardian, and does so, he is to be treated as the party plaintiff so far as Federal jurisdiction is concerned, even though suit might have been instituted in the name of the ward by guardian *ad litem* or next friend. He is liable for costs in the event of failure to recover and for attorneys' fees to those he employs to bring the suit, and in the event of success, the amount recovered must be held for disposal according to law, and if he does not pay the same over to the

> parties entitled, he would be liable therefor on his official bond."

The distinction between nominal and real parties is further illustrated by the case of *U. S. Fidelity & Guaranty Co.* v. *United States for the benefit of Kenyon*, 204 U. S., 349, 359. In that case a contractor's bond, requiring the contractor to make prompt payments to all persons supplying him with labor and material, ran to the United States. In an action by the United States against the surety on this bond it was held, distinguishing the cases where justices of the peace or governors of states were mere conduits through whom the law afforded a remedy to the persons injured, that the United States was a real litigant, and not a mere nominal party, and that the Government being the plaintiff and having the legal right, the Circuit Court might take original cognizance without regard to the value of the matter in dispute.

No point is made here by the appellants as to the failure of the trustee to sue. It may be proper to state, however, that the case in this connection is covered by *Pacific Railroad* v. *Ketchum*, 101 U. S., 289, 299. There the trustees doubted their right to proceed, but, having been made parties defendant, came in, as here, and sought the same relief as the plaintiff.

The case of *Greene* v. *Republic Fire Insurance Company*, 84 N. Y., 572, does not support appellants' contention. A judgment there had been obtained in the courts of Mississippi by the assignor of an insurance policy. The assignor had no real interest, but, by reason of the common-law rule prevailing in Mississippi that a chose in action was not assignable, the action was prosecuted in his name. The Court said:

> "The plaintiff in such an action is merely a nominal party. He has no actual interest in the suit, cannot control it, nor in any way interfere with the rights of the real party; nor is he a trustee in any sense, as he has no authority whatever. The owner alone is the real party, and it is only by reason of the rule referred to, which in this State has been superseded by the Code, that the action is brought in this form. The judgment belongs to the owner quite as much as if he was named as the plaintiff, and under the Code he alone can sue to recover the same."

The common-law rule having been changed in New York so as to require every action to be prosecuted in the name of the real party in interest, except in the case of an executor, administrator or trustee of an express trust, it was therefore held that the real owner, notwithstanding the Mississippi rule, might sue upon the judgment in the State of New York.

N. Y. Code of Civil Procedure, Sec. 449.

Neither have the cases of *Helm* v. *Zarecor*, 222 U. S., 32, and *Sharpe* v. *Bonham*, 224 U. S., 241, any application. In those cases the contest was between two church organizations for the control of the agencies and property of the church. As the Court said in the latter case:

> "To align the corporation itself with the complainants was virtually to decide the merits in their favor. The corporation was simply a title holder—an instrumentality, the mastery of which was in dispute."

Therefore, a publishing agency in the one case and trustees holding title to the property "as mere title holders" in the other case were held to be properly made defendants.

POINT II.

The bondholders represented by appellants were likewise citizens of the same state as the appellees.

The appellants claim in the petition to represent all but a small amount of the bondholders of the Twenty-eighth & Twenty-ninth Streets Crosstown Railroad Company, pursuant to an agreement entered into on the 22nd day of July, 1908 (Rec., p. 166). This was the ordinary protective agreement entered into in contemplation of an expected default in the payment of interest upon the bonds secured by the mortgage to the Central Trust Company. It was entered into because it was "deemed essential that the holders of said first mortgage bonds of the Crosstown Company take concerted action for the protection and promotion of their common interests" (Rec., p. 167). Among the powers conferred was the power "to institute such action or proceedings as it deems best upon or in respect of the guaranty of the Metropolitan Street Railway Company endorsed upon the first mortgage bonds of the Crosstown Company" (Rec., p. 173). There is nothing specific in the agreement authorizing the prosecution of the present action against the New York Railways Company. But however that may be, the most that can be claimed for this deposit agreement, if the committee were anything more than attorneys in fact of the individual bondholders, is that for the purposes of their protection they became their assignees. Plaintiff's Exhibit 14 (Rec., p. 184) and the stipulation between parties to this appeal (Rec., p. 352) show that many of these bondholders were citizens of New York. The committee cannot more fully represent these indi-

vidual bondholders than the trustee, to whom the guaranty ran, and who obtained the judgment upon the guaranty. By a parity of reasoning, if the trustee is to be treated in respect of the judgment as a mere use plaintiff, even more so is the same conclusion to be arrived at with reference to the bondholders represented by the committee. Inasmuch as, under Section 24, paragraph First, of the Judicial Code, an assignee cannot sue upon a chose in action unless his assignor is likewise by his citizenship qualified to sue in the Federal court, this action, upon the appellants' own theory, would have to be regarded as an action between citizens of the same state.

The case of *Blacklock* v. *Small*, 127 U. S., 96, 104, is in point. A bond had been assigned in trust for the children of the assignor. It was held that an action could not be maintained by two of the children against the obligor of the bond when another of the children, made defendant, was a party of the same state. The Court said:

> "The bond was a unit; the mortgage was a unit; and the assignment of the bond by Blacklock to Robertson in trust for the children of Blacklock was a unit. The bond cannot be enforced against Small, nor can the mortgaged premises be sold, in favor of the two plaintiffs alone. The relief asked in the suit must necessarily be for the benefit of the defendant Helen Robertson Blacklock, as well as for the benefit of the plaintiffs," etc.

POINT III.

The present action is in no sense ancillary or dependent to any previous action pending in the United States court.

The bill does not even purport to be dependent or ancillary to the foreclosure suit against the Metropolitan Street Railway Company pending in the United States District Court for the Southern District of New York. The general rule upon this subject was early stated in the case of *Dunn* v. *Clarke*, 8 Pet., 1, 3:

> "If other parties are made in the bill, and different interests involved, it must be considered, to that extent at least, an original bill; and the jurisdiction of the circuit court must depend upon the citizenship of the parties."

A supplemental bill is neither dependent nor ancillary.

Merriam v. *Saalfield*, 241 U. S., 22, 30, 31.

The case of *Wabash Railroad Co.* v. *Adelbert College*, 208 U. S., 38, 54, cited by appellants' counsel, does not support his position. The judgment against the Metropolitan Street Railway Company upon its guaranty was in no sense a part of the property in possession of the United States court in the foreclosure proceeding against that company. Much less can the claim now being prosecuted against the New York Railways Company be deemed to have been property in possession of that court.

POINT IV.

It is respectfully submitted that the judgment should be affirmed.

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